

# Conducting a Live Hearing Under Title IX/VAWA



Kathryn Nash

Pamela Kovacs

Jake Lorence



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Pamela Kovacs

Jake Lorence



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## Tell Us About Yourself

How many hearings of Title IX matters have you participated in?

- Not applicable (I have a different role in the process)
- None
- Less than 10
- 10 or more





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## Agenda

- Introduction and Legal Landscape
- Defining Sexual Misconduct
- Overview of the Process
- Working with the Parties
- The Hearing and Decision-Making Process
- Drafting a Notice of Determination
- Appeals






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## Terminology

- ED = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decisionmaker
- Complainant/Reporting Party/Accuser/Victim/Survivor
- Respondent/Responding Party/Accused/Alleged Perpetrator






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## The Legal Landscape






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## Session Overview

- Title IX
- Clery Act
- Violence Against Women Reauthorization Act
- Defining Sexual Misconduct
- Interaction with Other Laws
- Risks of Non-Compliance
- Training Requirements
- Recordkeeping Requirements




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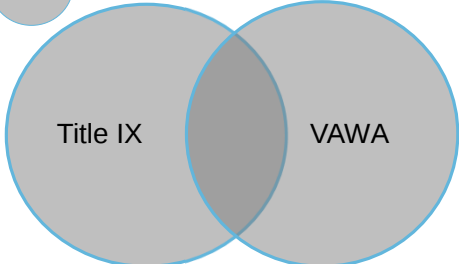
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Other Conduct

## Legal Obligations




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## Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance”

20 U.S.C. § 1681


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### Who Must Comply With Title IX?

- Institutions that receive federal funds
  - Students
  - Employees
  - Third Parties
    - Visitors
    - Vendors





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### Discrimination “on the Basis of Sex”

- Includes:
  - Sexual harassment
  - Differential treatment





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### When an Institution Must Respond

- Institution has actual knowledge of
- Sexual harassment
- In an education program or activity of the institution
- Against a person in the United States





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## When an Institution Must Respond

- Actual knowledge
  - Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the institution
    - Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator
  - Vicarious liability and constructive notice are insufficient
  - Standard not met if the only official with actual knowledge is the respondent

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## When an Institution Must Respond

- Actual knowledge (cont.)
  - The following does not qualify an individual as having the authority to institute corrective measures
    - Mere ability or obligation to report sexual harassment
    - Ability or obligation to inform a student about how to report
    - Being trained in how to report

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## When an Institution Must Respond

- Education program or activity
  - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
    - Includes all incidents of sexual harassment occurring on an institution's campus
  - Also includes off-campus conduct if
    - Occurs as part of the institution's "operations"
    - Institution exercised substantial control over the respondent and the context of alleged sexual harassment
    - Occurs at an off-campus building owned or controlled by a student organization officially recognized by the postsecondary institution (e.g., fraternities and sororities)

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### How an Institution Must Respond

- Must respond promptly in a manner that is not deliberately indifferent
- Deliberately indifferent = response is clearly unreasonable in light of the known circumstances
- Follow grievance process outlined in the regulations




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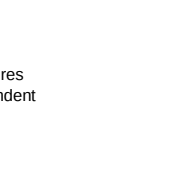
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### The Legal Landscape

- All schools receiving federal funds must:
  - Publish Notice of Nondiscrimination
  - Designate a Title IX Coordinator
  - Disseminate policy prohibiting sex discrimination
  - Adopt and publish fair and equitable grievance procedures
  - Offer supportive measures to a complainant and respondent
  - Follow a legally compliant grievance process
  - Train individuals with heightened responsibilities
  - Train students and employees




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### OCR's Enforcement and Guidance

- OCR's Role:
  - Issue guidance
  - Compliance reviews
  - Resolution agreements




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### Clery Act

- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection






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### Violence Against Women Reauthorization Act (VAWA)

- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual assault and VAWA crimes
- Requires education programs to promote awareness
- Codified parts of 2011 Dear Colleague Letter on Title IX






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### Defining Sexual Misconduct






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## Title IX—Sexual Harassment

- Conduct *on the basis of sex* that satisfies one or more of the following:
  - Quid pro quo
  - Hostile environment
  - Sexual assault and VAWA crimes

Quid Pro Quo

Hostile Environment

Sexual Assault & VAWA Crimes

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## Title IX – Sexual Harassment

- Quid pro quo:
  - Employee conditions aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct
- Examples:
  - Supervisor conditioning promotion on participation in sexual advance
  - Professor conditioning grade on participation in sexual advance

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## Title IX – Sexual Harassment

- Hostile Environment:
  - Unwelcome conduct (on the basis of sex) determined by a reasonable person to be so *severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the institution's education program or activity

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## Title IX – Sexual Harassment

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome sexual flirtations, advances, or propositions
  - Requests for sexual favors
  - Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
  - The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
  - Visual conduct such as leering or making gestures
  - Sexually suggestive comments about an individual's body or body parts, or sexually degrading words to describe an individual

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## Title IX – Sexual Harassment

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another's body
  - Unwelcome verbal or physical conduct against an individual related to the individual's gender identity or the individual's conformity or failure to conform to gender stereotypes
  - Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
  - Videotaping or taking photographs of a sexual nature without consent

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## Title IX—Sexual Harassment

- Sexual Assault
- VAWA Crimes
  - Dating violence
  - Domestic violence
  - Stalking
- As defined in Clery



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## Title IX—Sexual Harassment

### • Sexual Assault:

- **Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object without the consent of the victim, including instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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## Title IX—Sexual Harassment

### • Sexual Assault:

- **Criminal Sexual Contact:**
  - The intentional touching of the clothed or unclothed body parts or the forced touching by the victim of the actor's clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation, including instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.
- **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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## Consent

- No particular definition of consent with respect to sexual assault is required under Title IX or VAWA

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## VAWA Crimes

- **Domestic Violence:** a felony or misdemeanor crime committed by current/former spouse or intimate partner of the victim under domestic or family violence laws of the jurisdiction
- **Dating Violence:** violence by a person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)
- **Stalking:** course of conduct directed at a specific person that would cause a reasonable person to fear for safety or suffer substantial emotional distress

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## Title IX – Sexual Harassment

- Male/Female
- Female/Male
- Female/Female
- Male/Male
- Gender Identity

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## Legal Obligations\*

Other conduct

Title IX

Quid pro quo harassment that occurs in an education program or activity against a person in the United States

Hostile environment (as defined by Title IX) in an education program or activity against a person in the United States

VAWA

Sexual assault or VAWA crime that occurs outside an education program or activity

Sexual assault or VAWA crime that occurs against a person outside of the United States

Title IX & VAWA

Sexual assault or VAWA crime that occurs in an education program or activity against a person in the United States

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## Interaction with Other Laws

- FERPA: Family Educational Rights and Privacy Act
  - Limits disclosure of student education records
  - Several exceptions permit disclosure
    - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the decisionmaker, and statement of, and rationale for, the final results of any disciplinary proceedings or appeals, including sanctions and whether remedies will be provided
      - Required by Title IX
      - Does not include what the remedies are
    - In cases involving sexual assault/VAWA crime, exception permits school to disclose to the parties any information provided to the decisionmakers and the final results of the disciplinary proceedings, including *all* sanctions



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## Interaction with Other Laws

- Mandatory reporting laws: state-specific laws requiring school employees to report child abuse
  - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
  - Must report if know or reasonably suspect abuse or neglect of a child
  - Report to police or county department



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## Risks of Non-Compliance

- OCR enforcement
- Clery Act enforcement
- Lawsuits
  - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, negligent supervision, intentional infliction of emotional distress, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- Public relations



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## Training Requirements

- Train Title IX Coordinator, investigator, decisionmaker, or facilitator of informal resolution process on
  - Definition of sexual harassment
  - Scope of the institution's education program or activity
  - How to conduct investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
  - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
  - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (effects of trauma) (annually)
  - Institution's policies and procedures

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## Training Requirements

- Decisionmakers must also receive training on
  - Technology to be used at a live hearing
  - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications
- Training materials must be publicly available on institution's website

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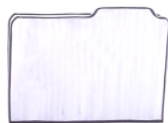
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## Recordkeeping Requirements

- Title IX – for 7 years, must maintain:
  - Investigation and adjudication records
  - Training materials for investigators, decisionmakers, coordinators, and persons designated to facilitate informal resolution process
  - Any actions taken (including supportive measures) in response to a report of sexual harassment

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## Recordkeeping Requirements

- Examples of decisionmaker's records:
  - Party and witness statements, if applicable
  - Recordings of interviews or interview notes
  - Other evidence received (text messages, pictures, etc.)
  - Investigation report
  - Decisionmaker notes
  - Recordings of decisionmaker meetings, if applicable
  - Recording of live hearing, if applicable
  - Notice of determination
  - Training records – relating to decisionmakers

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## Title IX Regulatory Update

- August 14, 2020: 2020 regulations took effect
- August 1, 2024: 2024 regulations took effect
- Summer 2024: Injunctions issued in 26 states and additional specific schools
- January 9, 2025: Court vacates regulations nationwide
- January 31, 2025\*: ED issues Dear Colleague Letter—2020 rules apply



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\*ED issued an updated letter on February 4, 2025

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## Overview of Process

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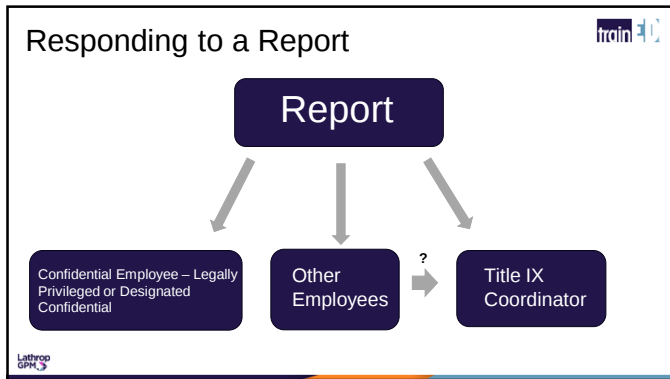
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### Employee Reporting Obligations

- Recommended approach:
  - All non-confidential employees report potential sexual harassment to Title IX Coordinator
  - If unsure whether to report, ask Title IX Coordinator for guidance without sharing identifiable information

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### Responding to a Report

- Title IX:
  - Institution has actual knowledge of
  - Sexual harassment (as defined by regulations)
  - In an education program or activity of the institution
  - Against a person in the United States
- VAWA:
  - Allegations of sexual assault, domestic violence, dating violence, or stalking
  - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)

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## Responding to a Report

- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
  - Inform complainant of the availability of supportive measures with or without the filing of a formal complaint
  - Consider complainant's wishes with respect to supportive measures
  - Explain the process for filing a formal complaint
  - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
  - Provide complainant with written notice of rights (VAWA)



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## Responding to a Report—Supportive Measures

- Offered to complainant and respondent
- Must be non-disciplinary, non-punitive
- Must be without fee or charge to the complainant or respondent
- Available before or after the filing of a formal complaint or where no formal complaint is filed
- Designed to restore or preserve equal access to recipient's education program or activity without unreasonably burdening the other party
- Including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impair ability of the institution to provide measures

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## Supportive Measures

- Examples
  - Mutual restrictions on contact between the parties
  - Change academic or extracurricular activities, living, transportation, dining, and working situations
  - Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, campus escort services, increased security, and student financial aid
- If school does not offer these services, enter into MOU with local victim services provider, if possible

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## Responding to a Report

- Other obligations:
  - Notify campus security, if necessary
  - Clery report, if necessary

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## Responding to a Report

- Report vs. Formal Complaint
  - Report
    - Initiates obligation to respond, including offering supportive measures
    - Complainant's identity may be kept confidential from respondent
  - Formal Complaint
    - Initiates grievance process
    - Cannot be filed anonymously
      - Requires complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the complaint
      - Title IX Coordinator can sign a complaint
      - Grievance process requires that complainant's identity be disclosed to respondent, if known

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## How an Institution Must Respond to Formal Complaint

- Notify respondent of grievance procedures and informal resolution process (if available and appropriate)
- Take steps discussed in prior section regarding responding to a report (if not yet taken)
  - Treat complainant and respondent equitably
  - Offer and coordinate supportive measures
  - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
  - Provide written notice of rights (VAWA)
  - Notify campus security, if necessary
  - Clery report, if necessary
- Initiate grievance procedures or informal resolution process

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## Grievance Procedure

- The process the school uses to resolve sexual harassment complaints. This includes the fact-gathering investigation and the decision-making process the school uses to determine:
  - Whether or not the conduct occurred using
    - Preponderance of the evidence standard ("more likely than not") or
    - Clear and convincing evidence standard ("highly probable"); and
  - If the conduct occurred, what actions the school will take to eliminate the hostile environment, prevent its recurrence, and remedy its effects, which may include:
    - Imposing sanctions on the respondent;
    - Providing remedies for the complainant; and
    - Addressing the campus community



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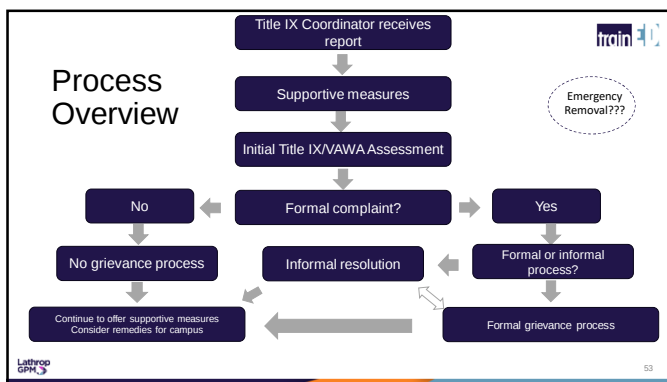
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## Role of Investigator in Formal Grievance Process

- Identify factual issues
- Give parties opportunity for input
- Compile investigation materials for decisionmakers and parties
- Credibility and/or make recommendations?
  - Can offer recommendations regarding responsibility but ultimate determination must be made by separate adjudicator (Title IX)
- Role does not include:
  - Adjudication of complaint
  - Providing support or advocacy to either party
  - Serving as a confidential resource





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## Formal Grievance Process

- Objective evaluation of all relevant evidence
  - Inculpatory and exculpatory evidence
  - Credibility determinations may not be based on status as complainant, respondent, or witness
- No conflicts of interest or bias as Title IX Coordinator, investigator, decisionmaker, or facilitator of informal resolution process
  - For or against complainants or respondents generally
  - For or against an individual complainant or respondent
- Presumption of non-responsibility

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## Formal Grievance Process: Dual Roles Under Title IX

- Title IX requires independent decisionmaker
  - Title IX Coordinator and decisionmaker must be different individuals
  - Investigator and decisionmaker must be different individuals
  - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decisionmaker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

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## Formal Grievance Process—Other Requirements

- Burden of proof and gathering evidence is on the institution, not on the parties
- May not restrict ability of either party to discuss the allegations or to gather and present relevant evidence

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## Formal Grievance Process—Advisors

- Parties have a right to an advisor of their choice
- May be, but not required to be, an attorney
- Advisors have right to receive copies/electronic access to of all directly related evidence (Title IX only)
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
- Institution must provide if none (Title IX only)
  - Limited role
- May otherwise limit extent of advisor's participation in the process (must apply equally)

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## Formal Grievance Process—Timeframes

- Reasonably prompt timeframes
  - Including timeframes for filing and resolving appeals and informal resolution processes
- Temporary delay or extension of timeframes for good cause, which may include
  - Absence of parties, a party's advisor, or witnesses
  - Concurrent law enforcement activity
  - Need for language assistance or accommodations of disability
- Must provide written notice to parties of the delay or extension and the reason for it
  - ED guidance: also include anticipated length of delay
- Some timeframes are set by the regulations (Title IX)



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## Formal Grievance Process

- Any provisions, rules, or practices other than those required by the regulations that an institution adopts as part of its grievance process must apply equally to both parties



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## Formal Grievance Process—Dismissal of Formal Complaint

- **Mandatory dismissal under Title IX**
  - Must dismiss formal complaint if alleged conduct
    - even if proved, would not constitute sexual harassment
    - did not occur in the institution's education program or activity or
    - did not occur against a person in the United States
  - Such dismissal does not preclude action under another provision of institution's code of conduct
- **Discretionary dismissal under Title IX**
  - May dismiss formal complaint if at any time during the investigation or hearing
    - complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations, therein
    - respondent is no longer enrolled or employed by the institution or
    - specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein

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## Formal Grievance Process—Consolidation of Formal Complaints

- **Title IX:** An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the *allegations of sexual harassment arise out of the same facts or circumstances*
- **VAWA:** No specific guidance

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## Criminal Process

- Institution's formal grievance procedure is separate from criminal process
- Institution may not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police
- May temporarily delay for initial police investigation
  - Prior guidance said police evidence-gathering stage typically takes 7-10 days
  - Must resume when notified that police are done gathering evidence
- May not delay for criminal prosecution

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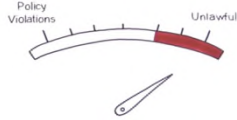
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## Differences Between Criminal and Institutional Investigations

- Different standards of proof
  - Probable cause vs. beyond reasonable doubt vs. preponderance of evidence vs. clear and convincing
- Different investigation "powers"
  - Subpoena powers vs. disciplinary actions
- Timing of processes
- Cooperating with law enforcement
  - Memorandum of Understanding
  - Use of police report



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## Working with the Parties



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## Case Study

When assessing the credibility of the complainant, which of the following might cause you to find the complainant less credible:

1. Complainant heavily redacts report from SANE exam before submitting it as evidence.
2. Complainant tells her teammates at practice the morning following the alleged assault that "nothing happened."
3. Complainant made a prior complaint against his coach three years earlier in an unrelated matter.
4. Complainant's friend had to convince him to report the alleged assault to the Title IX Coordinator.

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## Case Study

When assessing the credibility of the respondent, which of the following might cause you to find the respondent less credible:

1. Respondent blocks complainant on her phone and social media platforms after the alleged assault.
2. Respondent answers most questions about the alleged assault by saying, "I don't remember."
3. Respondent does not submit screenshots of text messages they referred to during their interview.
4. Respondent tells you he is transferring.

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## Session Overview

- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- How to Serve Impartially
  - Working with complainant
  - Working with respondent



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## Rape Myths

| Myth                                       | Reality                                                                                          |
|--------------------------------------------|--------------------------------------------------------------------------------------------------|
| Rape is primarily sexually motivated       | Rape combines elements of power, anger and sexuality                                             |
| Rapists are usually strangers              | Most perpetrators are known to the victim                                                        |
| The victim did something to cause the rape | No behavior warrants being raped; under no circumstances can the victim be blamed                |
| Acquaintance rape is not as traumatic      | There are no differences in victim psychological symptoms between acquaintance and stranger rape |

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## Secondary Victimization

- Secondary victimization:
  - The attitudes, beliefs, and behaviors that victims experience as victim blaming and insensitive
  - It exacerbates their trauma, and it makes them feel like what they're experiencing is a second rape — hence the term "secondary victimization"



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## Secondary Victimization

- Examples of behaviors:
  - Discouraging the victim from making the report
  - Telling victim it's not serious enough to pursue
  - Asking about dress, behavior, or what they might have done to provoke the assault
- Psychological impact on victims:
  - Blamed
  - Depressed
  - Anxious
  - Violated
  - Reluctant to seek help



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## Common Victim Responses

- Initial denial of incident
- No reporting/delayed reporting
- Maintaining contact with perpetrator
- Fight, flight, or freeze

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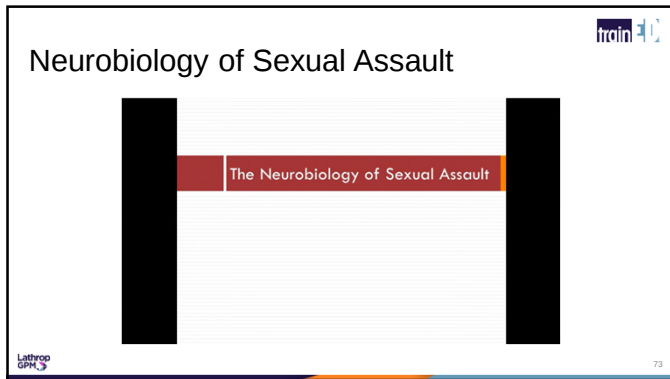
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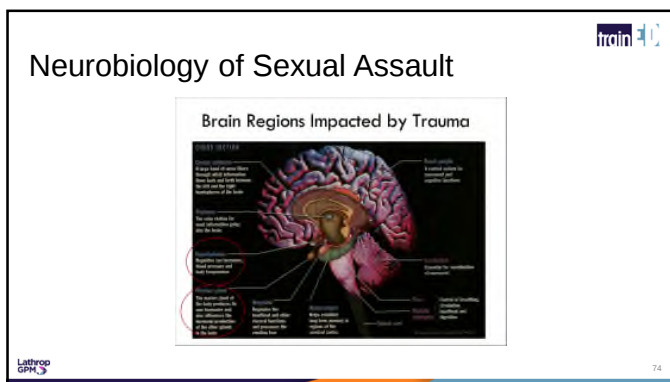
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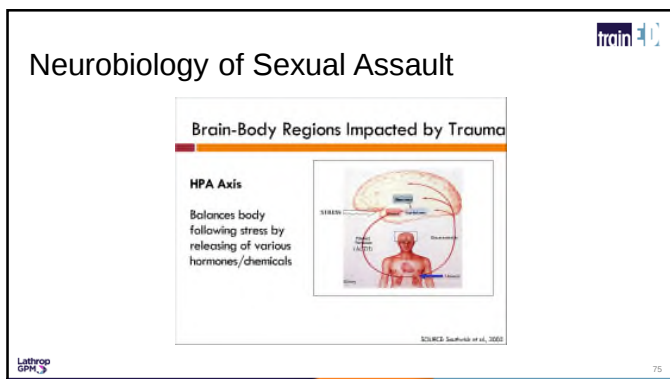
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Neurobiology of Sexual Assault

Brain-Body Regions Impacted by Trauma

**Catecholamines:** Fight or flight response

**Cortisol:** Energy available

**Opioids:** Prevent pain

**Oxytocin:** Promotes good feelings

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Neurobiology of Sexual Assault

Brain Regions Impacted by Trauma

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Neurobiology of Sexual Assault

Memory Processes Impacted by Trauma

**Hippocampus** processes information into memories

Encoding = Organizing sensory information

Consolidation = Grouping information into memories and storing them

**Amygdala** specializes in the processing of emotional memories (works with the hippocampus)

Both structures are VERY sensitive to hormonal fluctuations

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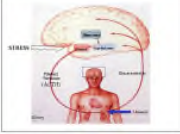
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## Neurobiology of Sexual Assault

Like These . . .

- Catecholamines:** Fight or flight response
- Cortisol:** Energy available
- Opioids:** Prevent pain
- Oxytocin:** Promotes good feelings



THESE HORMONES IMPAIR MEMORY CONSOLIDATION

SOURCE: Baro, 2003; Southwick et al., 2003

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## Neurobiology of Sexual Assault

What Happens During A Sexual Assault



SOURCE: Baro, 2003; Southwick et al., 2003

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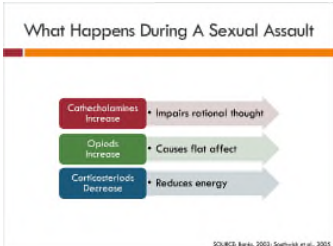
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## Neurobiology of Sexual Assault

What Happens During A Sexual Assault



SOURCE: Baro, 2003; Southwick et al., 2003

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## Neurobiology of Sexual Assault

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graph LR
    A[Amygdala Detects Threat] --> B[Activates Hypothalamus]
    B --> C[HPA Axis Kicks In]
    C --> D[Hormonal Flood]
    D --> E[Can Trigger a Complete "Shut Down" in the Body]
  
```

SOURCE: Banks, 2003; Southwick et al., 2003

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## Neurobiology of Sexual Assault

### Tonic Immobility (TI)

- AKA: "Rape-induced paralysis"
- Autonomic (uncontrollable) mammalian response in extremely fearful situations
- Increased breathing, eye closure, paralysis
- 12-50% rape victims experience TI during assault
- TI is ~more common in victims who have been assaulted before (childhood, adolescence, or adult)

SOURCE: Rose et al., 2007; Collins et al., 1993; Hirsch et al., 2003

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## Common Behaviors During Assault

- Impaired rational thought
- Flat affect
- Reduced energy
- Flight
- Fight
- Freeze

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## Memory

### What Happens During A Sexual Assault

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## Memory

### What Happens During A Sexual Assault

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## Memory

### Case Study: Memory Fragmentation

- 25 year-old woman
- Raped by a friend's brother at 4<sup>th</sup> July party
- Filed police report
- Detective interview was when it all went to hell

"He wouldn't let up, pounding me with question after question after question. Trying to trick me, trying to get me to mess up. I wanted to say, 'hold on, give me a minute to think'. No, he kept coming at me."

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Memory

Case Study: Memory Fragmentation

"We talked it through. And I didn't feel rattled and freaked out. I'm sure I was incoherent and he just let it roll. He was patient.

I felt like I was piecing it together, like a puzzle, we were putting together a puzzle together.

And drinking coffee."

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Memory

Case Study: Memory Fragmentation

I: So, why did you do that? (give her the coffee)

R: It helps. Not the coffee so much, just the moment to let it all come together in their heads.

I: What do you mean?

R: I don't know why it's like that, I've just noticed that over the years. If you give them a few minutes to breathe . . . . It starts to make more sense. I don't know why, it just does.

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**MEMORY CONSOLIDATION**  
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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Memory

Case Study: Memory Fragmentation

I: Were you worried that if you gave her some time, she'd just make something up?

R: Nah, not really. I mean, some victims lie, but most don't. Besides, if they're lying, we'll catch 'em at it eventually. I think it's just hard for victims to talk about and we just need to have a little patience.

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**MEMORY CONSOLIDATION**  
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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[illegible]

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92

[illegible]

- 93

[illegible]

## Take Away

- Do not automatically draw negative inference based on a behavior that may be a response to trauma
- If an individual exhibits behaviors associated with trauma, it does not automatically mean that individual experienced trauma
- A response consistent or inconsistent with a typical trauma response should not in and of itself be outcome determinative

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## Serving Impartially

- Avoid prejudgment of the facts at issue
- Avoid conflicts of interest
- Avoid bias
- Avoid appearing to agree with either party's account



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## Serving Impartially

- Set boundaries
  - Make objective role clear up front
  - Not counseling or advocacy services
  - Differentiate from your other roles within institution
  - Know how to respond when coming close to line
  - Point to Title IX Coordinator for resources

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## Serving Impartially



- Separate support/advocacy services from investigation/adjudication process
- Conflation of roles can:
  - Impact thorough assessment of the facts
  - Create distrust/confusion for parties
  - Give appearance of bias/lack of impartiality

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## Serving Impartially



- Allow sufficient time for exploration of the issues as needed
- Explain hearing process and agenda
- Allow questions about the hearing process
- Afford equal opportunity to participate in hearing (cross-examination, opening/closing statements, presentation of other evidence)
- Be transparent about how information will be used
- Ensure parties are fully aware of the prohibition against retaliation

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## Serving Impartially — Working with Complainant



- Recognize the impact of trauma on memory
- Memory may be impaired by alcohol
- Use “account” or “experience” rather than “story”
- Avoid secondary victimization

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## Serving Impartially — Working with Respondent



- Recognize stress involved with being accused of sexual misconduct
  - May be defensive
  - May be nervous or uncomfortable
- Memory may be impaired by alcohol



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## Communication



- Identify contact person who will coordinate with multiple departments/people on complainant's/respondent's behalf
- Ensure regular and timely communications to both parties regarding: next steps, expectations, timing, and delays
- Ensure that parties have notice of all meetings
- Document all communications, including phone calls
- Use sensitive and informed tone and content, both to the parties and among team members



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## Sources of Information



- NIJ Presentation by Rebecca Campbell
- trainED gratefully acknowledges the U.S. Department of Justice, Office of Justice Programs, and National Institute of Justice for allowing us to reproduce, in part or in whole, the recording of The Neurobiology of Sexual Assault. The opinions, findings, and conclusions or recommendations expressed in this recording are those of the speaker(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.



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## Process Following Investigation



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## Title IX Post Investigation Process Requirements



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- Provide parties with access to evidence that is **directly related** to the allegations – must send hard copy or electronic format to parties and advisors
- Provide parties with access to **investigation report** that fairly summarizes relevant evidence – must send hard copy or electronic format to parties and advisors
- Provide parties with opportunity to submit **written response** to each
- Must hold **live hearing** with opportunity for cross examination




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## Live Hearing & Decision-Making Process



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## Legal Requirements for Live Hearing

- General requirements under Title IX
  - Must provide live hearing
  - Permit each party's advisor to ask the other party and witnesses "all relevant questions and follow-up questions," including those challenging credibility
    - Cross-examination must be conducted directly, orally, and in real time by the party's advisor, never by the party personally
  - If party does not have advisor, institution must provide one for cross-examination
  - Institution can otherwise place restrictions on advisors' participation in the proceedings





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## Legal Requirements – School-Appointed Advisors

- Can request that the parties inform school in advance whether they have an advisor
  - If party does not have an advisor at the hearing, still required to provide an advisor even if party stated that they would have one
  - May want to have an advisor for each party on standby so that delaying the hearing is not necessary
- School-appointed advisor
  - Role is limited to relaying a party's questions
  - No particular skills, qualifications, or training is required
  - Does not need to be neutral or avoid conflicts of interest
  - If a party refuses to work with an assigned advisor – the party forfeits his or her right to cross-examination





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## Legal Requirements – Attendance at Hearing

- Parties may be accompanied only by their advisors and other persons for reasons "required by law"
  - Institution must keep confidential the complainant, respondent, and any witness except as may be permitted by FERPA, as required by law, or to carry out the grievance process
    - Limits institution's ability to authorize the parties to be accompanied to the hearing by individuals other than their advisors
  - A person assisting a party with a disability, or a language interpreter, may attend because presence is required by law and/or necessary to conduct the hearing





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## Legal Requirements – Cross-Examination

- Party or witness who does not appear at the hearing or refuses to answer questions at the hearing
  - Decisionmaker may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions
    - Consider weight to be given to statements
    - Consider allowing party or advisor to share questions they would have asked a party or witness who is absent or will not submit to cross-examination
  - Decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

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## Legal Requirements – Cross-Examination

- Party or witness who does not appear at the hearing
  - Advisor may conduct questioning on behalf of party even if party is not present
    - If institution-appointed advisor, party needs to provide questions in advance
  - If one party does something to wrongfully procure absence of a party or witness, that is likely retaliation and the school must remedy
  - School also cannot coerce unwilling participant
    - Be careful with any requirement that a student or employee cooperate with grievance process
    - Discipline for not attending hearing may constitute retaliation

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## Legal Requirements – Relevancy Determinations

- Hearing panel may hear arguments regarding relevancy of a question on the spot or may tell parties to reserve arguments for appeal (incorrect relevancy determination could be an alleged procedural error on appeal)
- Must allow question if relevant, even if misleading or assumes facts not in evidence
- Can establish rule that duplicative questions are not relevant
- Exclude questions with caution

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## Legal Requirements – Other Procedural Rules



- May establish additional rules that apply equally to both parties
  - Questioning must be respectful, non-abusive, not intimidating
  - Limit evidence at hearing to evidence that was gathered or presented as part of the investigation (or otherwise prior to the hearing)
  - Whether investigator may be called as a witness
  - Process for making objections to the relevance of questions and evidence
  - Other procedures at the hearing
    - Opening statements by parties or advisors
    - Closing statements by parties or advisors
  - Reasonable time limitations on hearings

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## Legal Requirements – Other Procedural Rules



- Some procedural rules are prohibited
  - Cannot prohibit a party from conferring with his or her advisor during the hearing
    - Likely can prohibit conferring when a question is pending
    - Could also discourage from conferring when a question is pending by warning that such conduct will be considered when weighing the party's credibility
  - Cannot prohibit character evidence, lie detector test results, evidence that is unduly prejudicial, or evidence of prior bad acts
    - Decisionmaker may determine how much weight to give such evidence

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## Stages of Decision-Making Process

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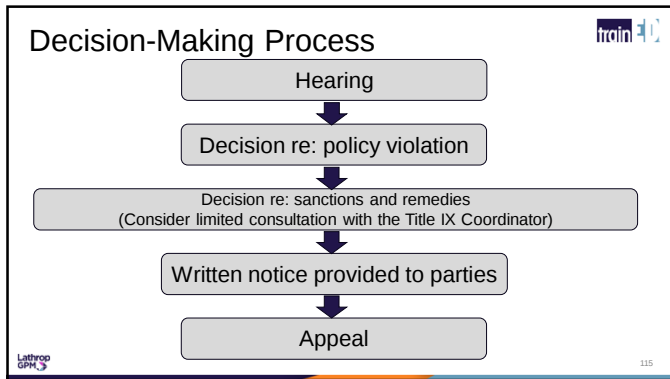
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- ### Stages of Decision-Making Process
- Stage 1: Prepare for hearing
  - Stage 2: Conduct hearing
  - Stage 3: Deliberate and make determination
  - Stage 4: Determine sanctions and remedies
  - Stage 5: Draft notice of determination
- The list is presented in a simple bullet-point format. The title 'Stages of Decision-Making Process' is at the top left, and the Lathrop GPM logo is at the top right. The slide number '116' is at the bottom left.

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## Stage One: Prepare for Hearing

The slide features a large, bold title 'Stage One: Prepare for Hearing' centered on the page. The background is white with a dark blue header and a decorative orange and blue wave graphic on the left side. The Lathrop GPM logo is in the bottom left corner, and the slide number '117' is in the bottom right corner.

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## Stage One: Prepare for Hearing - Decisionmaker



- May have single decisionmaker or a panel of decisionmakers
- If a panel of decisionmakers, may appoint one decisionmaker to make relevancy determinations at the hearing
- May appoint Title IX Coordinator or another individual who is not a decisionmaker to enforce procedural rules at the hearing
  - Decisionmaker must still determine relevancy issues

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## Stage One: Prepare for Hearing



- Communication with Others
  - Limit communication with Title IX Coordinator to procedural issues
  - Do not communicate with investigator outside of hearing
  - Do not communicate with parties, witnesses, or advisors outside of hearing

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## Stage One: Prepare for Hearing



- Determine hearing format and arrange technology
  - May conduct with all parties physically present in the same location
    - At the request of either party, institution must provide for live hearing to occur with the parties located in separate rooms with technology enabling the hearing panel and parties to simultaneously see and hear the party or witness answering questions

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## Stage One: Prepare for Hearing

- Determine hearing format and arrange technology (cont.)
  - May conduct virtually (for all parties, witnesses, and other participants), with technology enabling participants simultaneously to see and hear each other
    - Video is required; phone is insufficient

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## Stage One: Prepare for Hearing— Schedule Hearing

- Begin scheduling hearing during directly related evidence stage
- Notify all witnesses that their presence may be requested to check availability

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## Stage One: Prepare for Hearing— Notice of Meetings

- Title IX: Written notice to the party whose participation is invited or expected of the
  - Date
  - Time
  - Location
  - Participants
  - Purpose
 of all hearings, investigative interviews, or other meetings with a party with sufficient time for the party to prepare to participate
- VAWA: Timely notice to the other party of meetings that are part of the disciplinary process

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## Stage One: Prepare for Hearing

- Pre-hearing meeting with parties
  - Best for Title IX Coordinator to handle
  - Discuss procedure for hearing
  - Discuss parameters for evidence to be presented
  - Discuss role of advisors

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## Stage One: Prepare for Hearing

- Hearing panel reviews adjudication file
  - Ensure that parties have access to same information as panel
- Analyze issues for hearing (work together if multiple decisionmakers)
  - Identify ultimate questions that will need to be decided
    - Review institution's policy and how it defines relevant terms
    - Determine whether any additional information is needed to make the decision
      - Identify witnesses to ask if additional information is needed or if credibility is at issue
      - **CAUTION:** Don't base credibility on demeanor
  - Consider questions or topics that may come up and any anticipated relevancy issues

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## Stage One: Prepare for Hearing

- Determine logistics for hearing
  - Determine who will chair the hearing
  - Determine who provides list of witnesses requested by hearing panel to parties
  - Determine who will request that witnesses make themselves available for the hearing (including those identified by hearing panel and parties)
  - Determine whether investigator will be called as a witness
  - Determine order of witnesses
  - Ensure that all directly related evidence provided to parties during review phase is available for use at the hearing
  - Set up technology needed for hearing

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## Stage One: Prepare for Hearing

- Prepare script of opening remarks
  - Provide general explanation of reason for hearing
  - Explain hearing panel's role in the complaint process
  - Confirm hearing panel has reviewed investigation report


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## Stage One: Prepare for Hearing

- Prepare script of opening remarks
  - Explain hearing process to parties:
    - Process for hearing panel and advisors to ask questions
    - Advise party and advisor on advisor's role
    - Parameters for permitted questions
    - Discuss what type of evidence may be considered (relevant)
    - Instruct parties they do not need to repeat information included in the investigation report
    - Process for presenting arguments
    - Time limitations


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## Stage One: Prepare for Hearing

- Prepare script to use before each party/witness testifies
  - Confirm that no one else is in the room (if virtual hearing)
  - Inform parties and witness of recording and its use
  - Explain possible uses of party's/witness's statements
  - Explain that the hearing panel may need to ask difficult, detailed questions
  - Ask parties not to read into questions
  - Tell parties/witness if question unclear, let hearing panel know
  - Tell parties/witness okay to ask for break and pre-determine breaks
  - Instruct witness regarding confidentiality
  - Assure/warn parties/witness regarding policy prohibiting retaliation
  - Advise parties/witness on alcohol or other policy waiver
  - Obtain commitment to tell truth


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### Stage One: Prepare for Hearing

- Prepare script to use prior to dismissing each party/witness who testifies
  - Ask parties if any more questions for this witness
  - Remind witness of instructions regarding confidentiality
  - Remind regarding policy prohibiting retaliation

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### Stage One: Prepare for Hearing

- Prepare script of closing remarks
  - Remind regarding policy prohibiting retaliation
  - Explain that questions related to the process or resources should be directed to the Title IX Coordinator

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### Stage One: Prepare for Hearing

- Consider reviewing redacted excerpts of other hearings as part of training and preparation for hearing
- Consider holding a mock hearing to practice procedures and maintaining control during testimony and questioning

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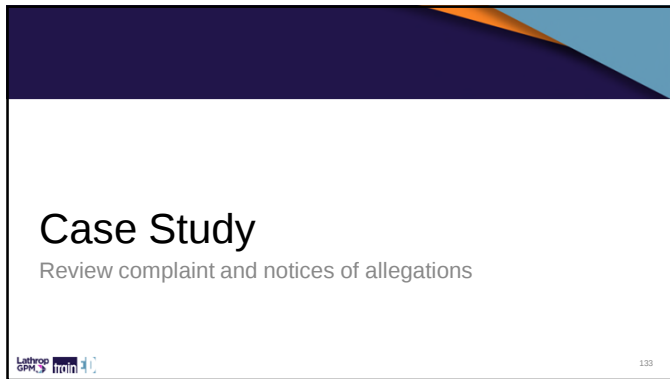
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## Case Study

Review complaint and notices of allegations

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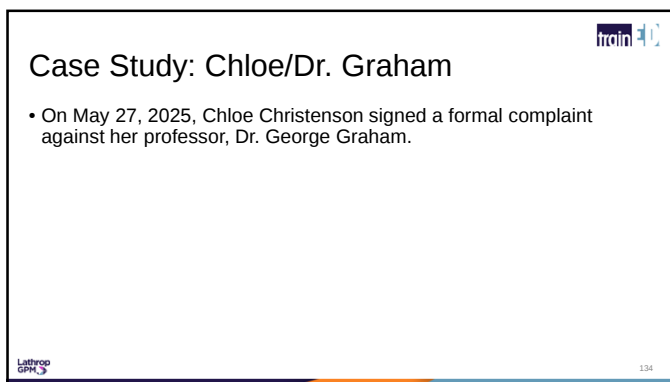
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## Case Study: Chloe/Dr. Graham

- On May 27, 2025, Chloe Christenson signed a formal complaint against her professor, Dr. George Graham.

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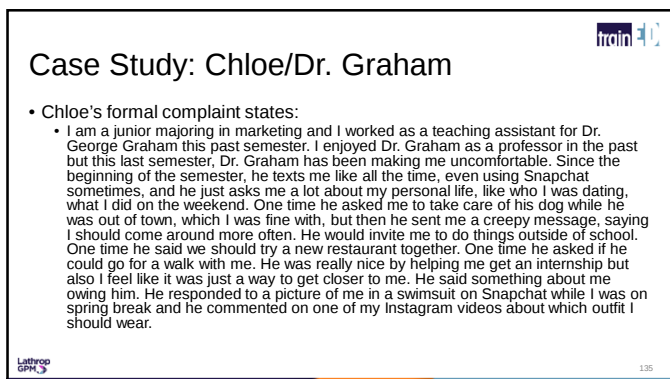
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## Case Study: Chloe/Dr. Graham

- Chloe's formal complaint states:
  - I am a junior majoring in marketing and I worked as a teaching assistant for Dr. George Graham this past semester. I enjoyed Dr. Graham as a professor in the past but this last semester, Dr. Graham has been making me uncomfortable. Since the beginning of the semester, he texts me like all the time, even using Snapchat sometimes, and he just asks me a lot about my personal life, like who I was dating, what I did on the weekend. One time he asked me to take care of his dog while he was out of town, which I was fine with, but then he sent me a creepy message, saying I should come around more often. He would invite me to do things outside of school. One time he said we should try a new restaurant together. One time he asked if he could go for a walk with me. He was really nice by helping me get an internship but also I feel like it was just a way to get closer to me. He said something about me owing him. He responded to a picture of me in a swimsuit on Snapchat while I was on spring break and he commented on one of my Instagram videos about which outfit I should wear.

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## Case Study: Chloe/Dr. Graham

- Chloe's formal complaint states (cont.):
  - Things just progressed throughout the semester, like he used weird emojis and I always wondered if he was trying to hint at inappropriate stuff. He talked to me about his marital problems. Then at the end of the semester, he hugged me and even rubbed my back during the hug. He also gave me gifts a couple of times. One of the gifts was just some candy and he gave me the other gift at the end of the semester when he hugged me. The candy wasn't that big of a deal, though it was weird to me that he knew what kind of candy was my favorite. When he gave me the journal, he included a note with a picture of himself, and that was super creepy. I'm really stressed out about coming back to school in the fall and having to see him.

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## Case Study: Chloe/Dr. Graham

### Excerpt of Notice of Allegations

On May 27, 2025, a formal complaint of alleged sexual misconduct was submitted by Chloe Christenson to the Title IX Coordinator alleging conduct by Dr. George Graham.

Chloe alleges that Dr. Graham engaged in unwelcome conduct on the basis of sex in the form of the following:

- On multiple dates between February through May 2025, Dr. Graham communicated to Chloe via electronic communication, including communicating to Chloe about personal matters.
- On multiple dates between February through May 2025, Dr. Graham selected Chloe for certain opportunities for the purpose of getting close to her, including referring her for an internship.
- On multiple occasions between February through May 2025, Dr. Graham invited Chloe to spend time with him outside of school.
- On April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham engaged in physical contact with Chloe.
- On or about March 18, 2025 and April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham gave Chloe gifts.

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## Case Study: Chloe/Dr. Graham

### Excerpt of Amended Notice of Allegations

On May 27, 2025, a formal complaint of alleged sexual misconduct was submitted by Chloe Christenson to the Title IX Coordinator alleging conduct by Dr. George Graham.

Chloe alleges that Dr. Graham engaged in unwelcome conduct on the basis of sex in the form of the following:

- On multiple dates between February through May 2025, Dr. Graham communicated to Chloe via electronic communication, including communicating to Chloe about personal matters.
- On multiple dates between March through May 2025, at various locations on campus, including in Dr. Graham's office and Mason Lecture Hall, Dr. Graham made verbal comments toward Chloe, including specifically on March 26, 2025, during the Marketing 101 course, Dr. Graham made comments and invited students to make comments about Chloe's physical appearance.
- On multiple dates between February through May 2025, Dr. Graham selected Chloe for certain opportunities for the purpose of getting close to her, including referring her for an internship.
- On multiple occasions between February through May 2025, Dr. Graham invited Chloe to spend time with him outside of school.
- On February 25, 2025, at an off-campus coffee shop, Dr. Graham engaged in physical contact with Chloe and communicated with her about personal matters.
- On April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham engaged in physical contact with Chloe.
- On or about March 18, 2025 and April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham gave Chloe gifts.

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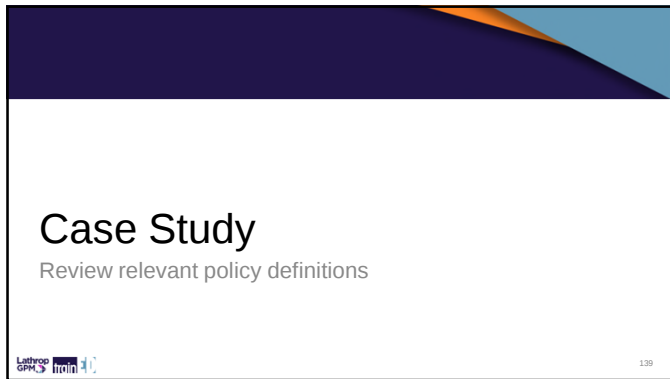
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## Case Study

Review relevant policy definitions

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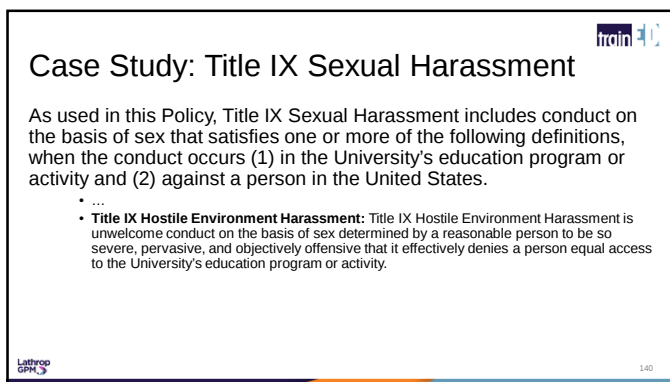
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## Case Study: Title IX Sexual Harassment

As used in this Policy, Title IX Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following definitions, when the conduct occurs (1) in the University's education program or activity and (2) against a person in the United States.

- ...
- **Title IX Hostile Environment Harassment:** Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

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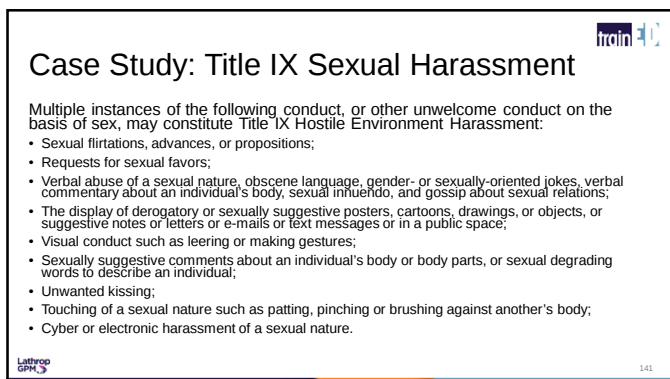
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## Case Study: Title IX Sexual Harassment

Multiple instances of the following conduct, or other unwelcome conduct on the basis of sex, may constitute Title IX Hostile Environment Harassment:

- Sexual flirtations, advances, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature, obscene language, gender- or sexually-oriented jokes, verbal commentary about an individual's body, sexual innuendo, and gossip about sexual relations;
- The display of derogatory or sexually suggestive posters, cartoons, drawings, or objects, or suggestive notes or letters or e-mails or text messages or in a public space;
- Visual conduct such as leering or making gestures;
- Sexually suggestive comments about an individual's body or body parts, or sexual degrading words to describe an individual;
- Unwanted kissing;
- Touching of a sexual nature such as patting, pinching or brushing against another's body;
- Cyber or electronic harassment of a sexual nature.

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## Case Study: Title IX Sexual Harassment

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

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## Case Study: Non-Title IX Sexual Harassment

While Title IX requires that the alleged conduct meet a certain threshold before it is considered Title IX Sexual Harassment, the University also prohibits unwelcome conduct on the basis of sex (1) that may not rise to the level of Title IX Sexual Harassment (as defined above), (2) that did not occur in the University's education program or activity, but may nevertheless cause or threaten to cause an unacceptable disruption at the University or interfere with an individual's right to a non-discriminatory educational or work environment, or (3) that did not occur against a person in the United States.

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## Case Study: Non-Title IX Sexual Harassment

As used in this Policy, Non-Title IX Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following definitions.

- ...
- **Non-Title IX Hostile Environment Harassment:** Non-Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe or pervasive that it substantially and unreasonably interferes with an individual's employment or education, or creates an intimidating, hostile, or offensive employment or educational environment.

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## Case Study: Non-Title IX Sexual Harassment

Examples of Non-Title IX Hostile Environment Harassment may include the same type of conduct listed above for Title IX Hostile Environment Harassment, when such conduct (1) does not rise to the level of being so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; (2) does not occur in the University's education program or activity; or (3) does not occur against a person in the United States.

\*Conduct cannot constitute both Title IX Sexual Harassment and Non-Title IX Sexual Harassment. Accordingly, if conduct is determined to be part of a finding of Title IX Sexual Harassment, then that conduct will not be separately analyzed as Non-Title IX Sexual Harassment.

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## Case Study: Unwelcome

**Unwelcome** conduct occurs when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

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## Case Study: On the Basis of Sex

**On the Basis of Sex** as used in this Policy means when conduct is sexual in nature or is referencing or aimed at a particular sex.

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## Case Study: Reasonable Person

**Reasonable person** means a reasonable person under similar circumstances and with similar identities to the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.



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## Case Study

Review investigation report and attachments



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## Case Study

Review party responses to the investigation report



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## Case Study: Party Report Responses

Excerpts from Party Statements in Response to the Investigation Report

Excerpt from Dr. Graham's Written Response to the Investigation Report

In response to Marcy claiming I am a "creep," I want to note that several of my students have provided thoughtful and positive feedback. I would love to have some of them speak on my behalf, but unfortunately that was not permitted in this process.

Also, after reading the directly related evidence and the entirety of the report, I am saddened to learn (for the first time) that Chloe felt this way about me. I never intended anyone to feel uncomfortable. My comments and such were always meant to be friendly and inviting, never anything inappropriate.


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## Case Study

Preparing for the hearing


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## Case Study: Chloe/Dr. Graham

- The Title IX Coordinator emails the parties to ask them which witnesses they would like to request for the live hearing. The Title IX Coordinator informs the parties that they have two days to provide the names of additional witnesses.
  - Chloe suggested Marcy and Noah, who both participated as witnesses during the investigation.
  - Dr. Graham suggested five professors from the marketing department. Dr. Graham had suggested to the investigator that she interview professors from the department, but no professors were interviewed as part of the investigation.
    - Should all five professors be called at the hearing?


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## Case Study

- Dr. Graham responds to the Title IX Coordinator to say that in light of the time limitations, he would like to change his request to two professors. He says that the professors can speak to issues related to academic freedom and relationships between faculty and their TAs.
- However, he states that one of the professors he would like to call cannot attend the hearing due to a scheduling conflict. He asks that the hearing be rescheduled.
- The Title IX Coordinator contacts you to discuss the unavailable witness.
- How should the institution respond?

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## Case Study: Chloe/Dr. Graham

- You and other members of the hearing panel determine that in addition to the witnesses requested by the parties, you would like to request Isaac Isaacson, the male student who served as Dr. Graham's TA.
- You inform the Title IX Coordinator of your decision regarding witnesses.

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## Case Study

- The Title IX Coordinator requests the following witnesses be available for the live hearing:
  - Marcy
  - Noah
  - Dr. Eileen Einerson
  - Isaac Isaacson
- The Title IX Coordinator informs the parties of the final list of witnesses that have been requested.

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### Case Study: Chloe/Dr. Graham

- After reviewing the adjudication file, what questions do you have for the parties or witnesses at the live hearing?
- Are there any holes in the investigation report?

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### Case Study: Macie/Callie

- You are preparing for another hearing involving a sexual assault allegation brought by Macie against Callie.
- The Title IX Coordinator tells you that Macie has requested that a psychologist who studies how trauma affects memory participate in the hearing as an expert witness. Macie told the Title IX Coordinator that the psychologist will speak to why Macie is not able to remember portions of the sexual interaction with Callie. Macie said that she did not suggest that the investigator interview the psychologist during the investigation process because she did not know about the psychologist until she attended an event about sexual violence on campus at which the psychologist spoke. The Title IX Coordinator asks you whether you think the psychologist should be able to participate in the hearing.
- How do you respond?
- What does the policy say?

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### Case Study: Macie/Callie

- During the investigation of Macie's allegations against Callie, Callie's mother was interviewed because Callie called her mother immediately after the sexual interaction with Macie to tell her what occurred. Three days before the hearing, Callie notifies the Title IX Coordinator that she would like her mother to serve as her advisor for the hearing, instead of the faculty member who served as her advisor during the investigation. The Title IX Hearing Panel has requested that the mother be called as a witness at the hearing. Should the mother be permitted to serve as an advisor during the hearing?

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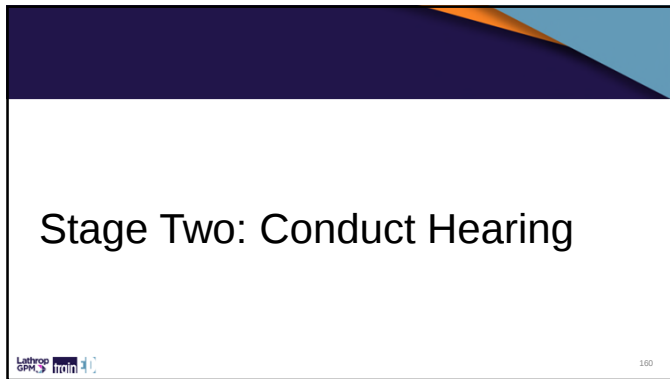
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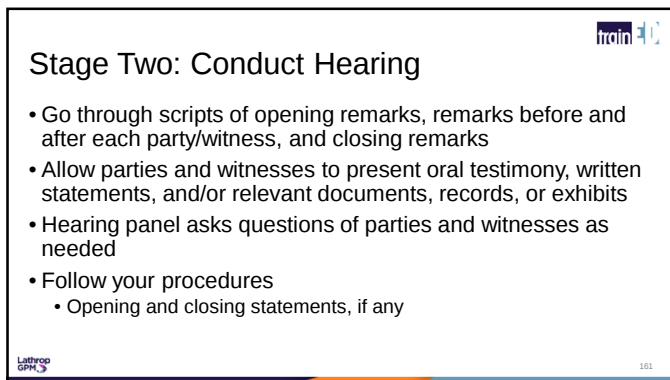
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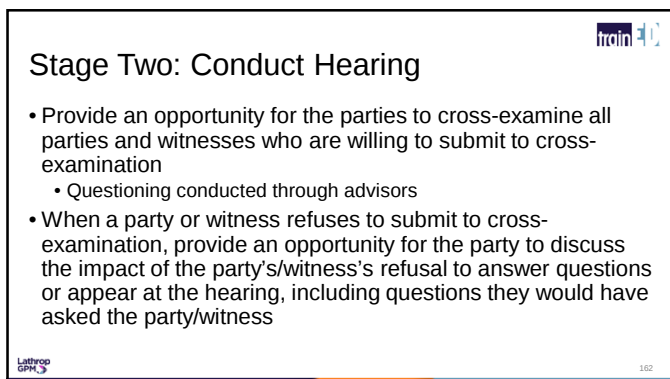
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## Stage Two: Conduct Hearing

- Hearing panel questioning of parties and witnesses
  - Ask clarifying questions as needed
    - Limit questions to those needed to make your decision (avoid questions out of curiosity)
    - Distinguish between personal knowledge and hearsay
  - Review checklist of issues – confirm addressed

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## Stage Two: Conduct Hearing

- Avoid impermissible evidence
  - Privileged information, unless individual holding privilege has waived it (e.g., doctor-patient privilege, attorney-client privilege, victim advocate privilege)
  - Treatment records, unless individual has provided written consent
  - Prior sexual history/conduct (see next slide)

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## Stage Two: Conduct Hearing

- Prior Sexual History/Conduct
  - Complainant's prior sexual history is not relevant unless an exception applies
    - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
    - The questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

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## Stage Two: Conduct Hearing

- Instruct parties and witnesses to pause after each question to allow time for relevancy determination
- Potential reasons to exclude a question:
  - Redundant
  - Harassing
  - Prior sexual history/conduct without exception
  - Irrelevant
- Provide reasoning when excluding a question
- Exclude questions with caution
- Recommendation: allow advisors or parties to briefly articulate why a question is relevant or not relevant




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## Stage Two: Conduct Hearing

- Wait to make final decision on responsibility and sanctions (rather than making the decision immediately after hearing)
  - Notice must include explanation of how information and evidence was weighed and how it supports the result and sanctions




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## Case Study

Conduct Hearing




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### Case Study: Chloe/Dr. Graham

- After all parties and witnesses have been called at the hearing, you ask the parties if they have any additional evidence to submit. Dr. Graham's advisor says he would like to submit text messages between Dr. Graham and Chloe in which Chloe shared personal information about her family and how her other classes were going. Dr. Graham's advisor says that the text messages were recovered from Dr. Graham's cell provider after the close of evidence.
- How do you respond?

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### Case Study: Chloe/Dr. Graham

- In addition to hearing from the parties at the hearing, the hearing panel also heard from the witnesses in the investigation report—Marcy and Noah. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided.
- The panel also heard from two new witnesses, including the following:
  - Dr. Eileen Einerson, a professor in the Marketing Department, states that it is common for professors in the department to communicate with their students via text and to engage with students on social media. She explains that since social media is such a significant marketing tool, professors need to train and observe students on it.

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### Case Study: Chloe/Dr. Graham

- New witnesses (cont.):
  - Isaac Isaacson stated that he served as Dr. Graham's TA during the fall 2020 semester. When asked by Dr. Graham's advisor about his relationship with Dr. Graham, Isaac stated, "Normal professor-TA relationship. We would connect via Zoom at least once a week and he would assign me work to do for class preparation, grading, or research." When asked by Dr. Graham's advisor whether they ever communicated via text, Isaac stated, "Yeah, we would text each other with quick questions, stuff like that." When asked by the Hearing Officer if he and Dr. Graham ever met in person outside of school, Isaac stated, "No, that was in the middle of COVID, so there were no in-person meetings at all." When asked by the Hearing Officer whether Dr. Graham communicated with him via social media, Isaac stated, "I don't think so. Not that I can remember." When asked by the Hearing Officer if he had ever received a gift from Dr. Graham, Isaac stated, "Not that I can remember. If he did, it wasn't anything that stands out to me."

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### Case Study: Mary/Tom

- You are conducting another hearing. The Complainant, Mary, alleged that the Respondent, Tom, touched her breast in front of two witnesses—Frank and Betty. Tom denies touching Mary's breast.
- Both Frank and Betty were interviewed as part of the investigation. Frank said that he witnessed Tom touch Mary's breast and that Betty was also present and saw it. Betty said that Tom did not touch Mary's breast and that Mary and Frank are lying.
- Both Frank and Betty are requested as witnesses for the live hearing. At the live hearing, Tom's advisor asks Frank:
  - "Isn't it true that you are currently sleeping with Mary?"
- Mary's advisor objects to the question as prior sexual history. Tom's advisor argues that the question is relevant because Frank has a motive to fabricate his story due to his relationship with the Mary.
- Do you allow the question?

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### Case Study: Mary/Tom

- What if the situation was slightly different...
- At the live hearing Mary's advisor asks Betty:
  - "Isn't it true that you are currently sleeping with Tom?"
- Tom's advisor objects to the question as prior sexual history. Mary's advisor argues that the question is relevant because Betty has a motive to fabricate her story due to her relationship with Tom.
- Do you allow the question?

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## Stage Three: Deliberate and Make Determination

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## Decision-Making Process

- Objective evaluation of all relevant and not otherwise impermissible evidence
  - Inculpatory and exculpatory evidence
  - Credibility determinations may not be based on status as complainant, respondent, or witness
- Presumption of non-responsibility

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## Decision-Making Process

- What evidence will the decisionmaker consider?
  - Investigation report
  - Parties' response statements
  - Evidence presented at live hearing
- NOTE: Whatever information is provided to the decisionmaker must be shared with the parties
  - Title IX or VAWA

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## Evidentiary Issues

- Always consider relevance and weight of evidence
  - Relevant: related to the allegations under investigation
  - Questions are relevant when they seek evidence that may aid in showing whether the alleged conduct occurred
  - Evidence is relevant when it may aid a decisionmaker in determining whether the conduct occurred
- Do not consider impermissible evidence

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## Evidentiary Issues

- Types of evidence
  - Statements from parties and witnesses contained in investigation report
  - Evidence from live hearing
    - Caution – do not rely on party or witness's demeanor
  - Character evidence
  - Physical evidence (texts, video, security access information, etc.)
  - Medical information (including mental health records)
    - Only with waiver/consent
    - Consider need for expert guidance in understanding and interpreting information
  - Polygraph/lie detector test results





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## Evidentiary Issues

- Prior bad acts/pattern evidence:
  - Allegation v. policy violation
  - Determine relevance and weight of evidence
  - May be relevant in fact-finding *and/or* sanction determination
  - Consider timing and process for requesting and providing access to the decisionmaker and the parties





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## Weighing Evidence / Assessing Credibility

- Is information the witness provided accurate based on other evidence?
- How did the witness learn the facts?
- How well did he or she recall facts?
- How forthcoming was the witness?
- Did the witness seem honest and sincere? (*caution*)
- What are the possible motives for being less than truthful?
- What is the witness's relationship to the complainant and respondent?
- Are there other factors that bear on the believability of the witness?





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## Dealing with Inculpatory & Exculpatory Evidence



- Consider all relevant evidence provided
  - Do not cherry-pick evidence that supports your conclusion
  - Do not ignore contrary evidence
- If evidence supporting both conclusions exists:
  - Is some evidence stronger than other evidence? If so, why?
  - Do you find one party more credible than the other party? If so, why?
  - If a witness's statement is contrary to your conclusion, why do you not believe the witness?

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## Lesson Learned From Litigation



- In September 2024, a court denied Rutgers University's motion to dismiss the plaintiff's Title IX claim. The male plaintiff had been found responsible for stalking and dating violence in the University's complaint resolution process.
- The court found that plaintiff's erroneous outcome argument was supported by two findings by the decisionmaker that potentially went against the weight of the evidence. The court found the findings were enough to support a plausible inference that the decisionmaker was influenced by anti-male bias.
- Lesson Learned: Take great care in drafting notices of determination. Need to acknowledge evidence that is contrary to the finding and explain why it does not change the finding.

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## Case Study: Macie/Callie



- A week ago, you conducted the live hearing between Macie, the complainant, and Callie, the respondent. Macie declined to participate in the live hearing. Callie participated in the live hearing and was asked questions by her advisor, Macie's advisor, and the hearing panel.
- Consistent with the University's policy, the Title IX Coordinator provides the parties with access to the hearing transcript as soon as it is available.
- Macie immediately provides a written response to the transcript detailing her side of the story and what she would have testified to if she would have participated in the hearing. She provides this response prior the Notice of Determination being issued.
- Should the hearing panel consider the response?

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## Judging Credibility

- Cautions about judging credibility based on demeanor:
  - Remember trauma-informed training
  - Parties and witnesses may be nervous or uncomfortable
  - Parties and witnesses may be defensive, especially when subjected to cross-examination
- Focus on evidence presented
  - What evidence is consistent with complainant's and respondent's accounts?
  - What evidence is inconsistent with complainant's and respondent's accounts?

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## Determination

- Finding re: what conduct occurred
- Finding re: policy violation
- Sanctions (if any)
- Remedies (if any)
- Written Notice



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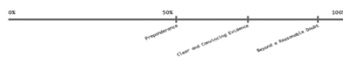
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## Determination—Finding

- Standard of proof
  - "Preponderance of the evidence" or "clear and convincing" (not "beyond a reasonable doubt")
  - Use same standard of proof for all formal complaints of sexual harassment
  - Burden is on the school to gather sufficient evidence to reach a fair, impartial determination
  - Presumption of non-responsibility that would need to be overcome
  - Decisionmaker(s) must ultimately decide whether it was more likely than not that a policy violation has occurred (preponderance) or whether it is highly probable that a policy violation has occurred (clear and convincing)



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## Determination—Finding

- Preponderance:
  - Must decide either that:
    - There was sufficient evidence to establish that it was "more likely than not" that the respondent violated the institution's policy OR
    - There was insufficient evidence to establish that it was "more likely than not" that the respondent violated the institution's policy
- Clear and convincing:
  - Must decide either that:
    - There was sufficient evidence to establish that it was "highly probable" that the respondent violated the institution's policy OR
    - There was insufficient evidence to establish that it was "highly probable" that the respondent violated the institution's policy

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## Case Study

Determine whether a policy violation occurred and rationale for your decision

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## Determination—Sanctions and Remedies

- Consider who will decide the sanctions and how
  - Consider limited role of Title IX Coordinator
- Any information provided to individual(s) who determine sanctions must also be provided to the parties (VAWA)
- Policy must list *all* possible sanctions and describe the range of remedies (VAWA)
  - The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement (VAWA)
- Sanctions must be included in notice of determination (Title IX and VAWA)

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## Determination—Sanctions and Remedies

- Possible Sanctions
  - No contact order
  - Suspension or Expulsion
    - Transcript notations?
    - Disclosure to other institutions?
    - Separate disciplinary file?
  - Change in class schedule/living arrangements
  - Mandatory training/counseling
  - Limitations on access to campus facilities
  - Limitations on campus activities
  - Community service
  - Delay of degree conferral
  - Temporary or permanent revocation of degree

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## Determination—Sanctions and Remedies

- Sanctions when student **not** suspended or expelled
  - Make inquiries to determine whether restrictions need to be made to:
    - living arrangements
    - class schedules
    - use of facilities
    - co-curricular activities
    - campus events
  - Allow for Title IX Coordinator or other designee to modify or clarify
    - General no contact directive → limit use of facilities to specific time
  - Consider restrictions when respondent graduates or withdraws, but complainant is still a student

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## Determination—Sanctions and Remedies

- Must treat complainants and respondents equitably by
  - Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made
    - Remedies must be designed to restore or preserve equal access to the institution's education program or activity
    - May include the same individualized services as "supportive measures"
    - Do not need to be "non-disciplinary" or "non-punitive" and do not need to avoid burdening the respondent
  - Following grievance process that complies with regulations before imposing disciplinary sanctions or other actions that are not supportive measures
- Consider remedies for broader student population

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## Determination—Sanctions and Remedies

- Remedies for complainant
  - Changing living arrangements
  - Escorts
  - Separation from respondent
  - Counseling services
  - Medical services
  - Academic support services/accommodations
  - Allowing course withdrawal without penalty
  - Reviewing disciplinary actions against complainant to determine if harassment contributed
  - Reviewing academic issues to determine if harassment contributed
  - Financial aid and/or immigration assistance

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## Determination—Sanctions and Remedies

- Remedies for broader student population in some cases:
  - Proactive measures to prevent sexual harassment and violence, such as trainings
  - Developing effective written materials to educate students on policy and resources
  - Encourage students to report
- Periodic "climate checks" and review of issues (e.g., better lighting?)
- Regulations only require a range of all protective measures for sexual misconduct in policy

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## Case Study

Determine sanctions and rationale for your decision

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## Case Study: Sanctions

- You have found Dr. Graham responsible for a policy violation. How will you determine the appropriate sanctions?



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## Drafting a Notice of Determination



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## Legal Requirements

- Allegations of sexual harassment
- Procedural steps taken (notifications to the parties, interviews, site visits, other methods used to gather information, hearing)
- Findings of fact supporting the determination
- Conclusions regarding application of code of conduct to the facts
- Statement of and rationale for results as to each allegation
- Disciplinary sanctions, if any, and rationale for sanctions
- Whether remedies will be provided to complainant
- Procedures and permissible bases for appeal
- Simultaneous delivery



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### Notice of Determination—Elements

- Contents and level of detail may vary depending on applicable legal requirements
- Summary of complaint(s)/allegations
  - Recap allegations in the complaint
  - Use neutral language
- Procedural steps since complaint
  - Notices to the parties
  - Interviews with parties and witnesses
  - Site visits
  - Methods used to gather other evidence
  - Hearing held
    - Note which parties/witnesses appeared
    - Note consideration of parties' arguments in closing regarding impact of any party's/witness's refusal to appear/answer questions
  - Reference policy provisions setting forth the process



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### Notice of Determination—Elements

- Relevant policy provisions
  - Definition of relevant prohibited conduct
    - Elements of the offense
  - Consider other relevant definitions (e.g., consent, incapacitation, coercion, welcomeness)
  - Burden of proof

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### Notice of Determination—Elements

- Findings of fact supporting the determination
  - Specify whether testimony/evidence came from the investigation or from another portion of the process
  - Double-check recording when quoting from hearing
- Result/decision
  - Conclusion regarding application of policy definition to the facts



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## Notice of Determination—Elements

- Rationale for the result as to each allegation
  - Must include explanation of how information and evidence was weighed and how it supports the result
  - Explain how standard of evidence was applied

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## Notice of Determination—Elements

- Written notice should address all relevant evidence provided, including evidence that is contrary to your conclusion
  - What evidence supports your conclusion?
  - What evidence is contrary to your conclusion?
  - Why is the evidence that supports your conclusion stronger?
- Explain credibility determinations
  - Why do you find one party more credible than the other?
  - If a witness's statement is contrary to your conclusion, why do you not believe the witness?
- The reader should be able to tell that you considered all relevant evidence in making your decision

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## Notice of Determination—Elements

- Sanctions (if any)
  - Also provide the rationale for the sanctions
  - Build in ability for Title IX Coordinator to modify/clarify sanctions and address future right to appeal
- State whether any remedies will be provided

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## Notice of Determination—Elements

- Appeal process
  - To whom appeals should be sent
  - Required format of request for appeal
  - Timing/deadline for appeal
  - Bases for appeal
  - Who will decide the appeal
  - Overview of process



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## Notice of Determination—Delivery

- Must be in writing
- Must be delivered simultaneously
  - Email
  - In-person meetings to deliver hard copies of written notice
- Best practice: Let parties know ahead of time when decision will be delivered

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## Notice of Determination—FERPA

- FERPA Exception – compliance with requirements for disciplinary proceedings—including the inclusion of the rationale for the result and the sanctions—does not violate FERPA

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## Notice of Determination—Implementation

- Determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of any appeal or if no party appeals, date on which appeal would no longer be timely



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## Case Study

Review notice of determination



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## Appeals



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## Appeals Under Title IX

- Must be offered to both parties
  - From a determination regarding responsibility
  - From a recipient's dismissal of a formal complaint or any allegations therein
- Required bases:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
  - May offer an appeal equally to both parties on additional bases



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## Appeals Under Title IX

- Requirements
  - Notify other party in writing when an appeal is filed
  - Appeal officer is different than Title IX Coordinator, investigator and decisionmaker at hearing
  - No conflict of interest or bias
  - Give both parties reasonable, equal opportunity to submit written statement in support of, or challenging, the outcome
  - Written decision describing result of appeal and rationale
  - Simultaneous delivery of result to parties



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## Appeals Under VAWA

- Not required, but if offered, must do so equally
- Transparency, equality, notice requirements from main process will apply to appeals
- Examples include:
  - Right to advisor
  - Notice of meetings
  - Access to information used by appeals panel/individual
  - Simultaneous notice of outcome



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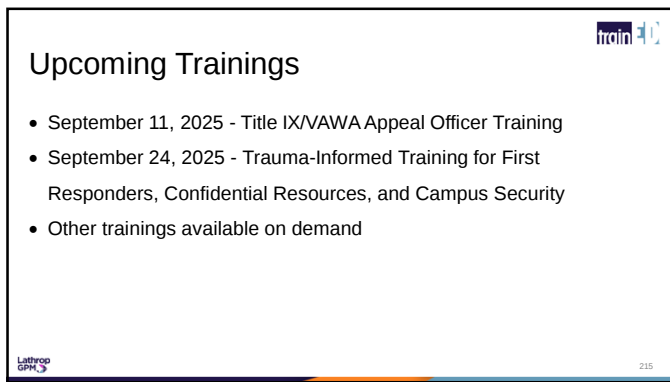
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## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 1

#### **Formal Complaint**

On May 27, 2025, Chloe Christenson made a complaint of sexual harassment against Dr. George Graham.

#### **Sexual Harassment Formal Complaint Form**

**COMPLAINANT NAME:** Chloe Christenson

**DATE OF ALLEGED POLICY VIOLATION:** Spring semester 2025

**DATE OF COMPLAINT:** May 27, 2025

**RESPONDENT NAME:** Dr. George Graham

#### **ALLEGATIONS:**

I am a junior majoring in marketing and I worked as a teaching assistant for Dr. George Graham this past semester. I enjoyed Dr. Graham as a professor in the past but this last semester, Dr. Graham has been making me uncomfortable. Since the beginning of the semester, he texts me like all the time, even using Snapchat sometimes, and he just asks me a lot about my personal life, like who I was dating, what I did on the weekend. One time he asked me to take care of his dog while he was out of town, which I was fine with, but then he sent me a creepy message, saying I should come around more often. He would invite me to do things outside of school. One time he said we should try a new restaurant together. One time he asked if he could go for a walk with me. He was really nice by helping me get an internship but also I feel like it was just a way to get closer to me. He said something about me owing him. He responded to a picture of me in a swimsuit on Snapchat while I was on spring break and he commented on one of my Instagram videos about which outfit I should wear. Things just progressed throughout the semester, like he used weird emojis and I always wondered if he was trying to hint at inappropriate stuff. He talked to me about his marital problems. Then at the end of the semester, he hugged me and even rubbed my back during the hug. He also gave me gifts a couple of times. One of the gifts was just some candy and he gave me the other gift at the end of the semester when he hugged me. The candy wasn't that big of a deal, though it was weird to me that he knew what kind of candy was my favorite. When he gave me the journal, he included a note with a picture of himself, and that was super creepy. I'm really stressed out about coming back to school in the fall and having to see him.

**I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.**

**X** *Chloe Christensen*

## **2025 Conducting a Live Hearing Under Title IX/VAWA Training**

### **Handout 2**

#### **Excerpt of Notice of Allegations**

On May 27, 2025, a formal complaint of alleged sexual misconduct was submitted by Chloe Christenson to the Title IX Coordinator alleging conduct by Dr. George Graham.

Chloe alleges that Dr. Graham engaged in unwelcome conduct on the basis of sex in the form of the following:

- On multiple dates between February through May 2025, Dr. Graham communicated to Chloe via electronic communication, including communicating to Chloe about personal matters.
- On multiple dates between February through May 2025, Dr. Graham selected Chloe for certain opportunities for the purpose of getting close to her, including referring her for an internship.
- On multiple occasions between February through May 2025, Dr. Graham invited Chloe to spend time with him outside of school.
- On April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham engaged in physical contact with Chloe.
- On or about March 18, 2025 and April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham gave Chloe gifts.

## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 3

#### **Excerpt of Amended Notice of Allegations**

On May 27, 2025, a formal complaint of alleged sexual misconduct was submitted by Chloe Christenson to the Title IX Coordinator alleging conduct by Dr. George Graham.

Chloe alleges that Dr. Graham engaged in unwelcome conduct on the basis of sex in the form of the following:

- On multiple dates between February through May 2025, Dr. Graham communicated to Chloe via electronic communication, including communicating to Chloe about personal matters.
- **On multiple dates between March through May 2025, at various locations on campus, including in Dr. Graham's office and Mason Lecture Hall, Dr. Graham made verbal comments toward Chloe, including specifically on March 20, 2025, during the Marketing 101 course, Dr. Graham made comments and invited students to make comments about Chloe's physical appearance.**
- On multiple dates between February through May 2025, Dr. Graham selected Chloe for certain opportunities for the purpose of getting close to her, including referring her for an internship.
- On multiple occasions between February through May 2025, Dr. Graham invited Chloe to spend time with him outside of school.
- **On February 25, 2025, at an off-campus coffee shop, Dr. Graham engaged in physical contact with Chloe and communicated with her about personal matters.**
- On April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham engaged in physical contact with Chloe.
- On or about March 18, 2025 and April 25, 2025, in Dr. Graham's on-campus office, Dr. Graham gave Chloe gifts.

## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 4

#### Title IX Sexual Harassment

As used in this Policy, Title IX Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following definitions, when the conduct occurs (1) in the University's education program or activity and (2) against a person in the United States.

- i. ...
- ii. **Title IX Hostile Environment Harassment:** Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

Multiple instances of the following conduct, or other unwelcome conduct on the basis of sex, may constitute Title IX Hostile Environment Harassment:

- Sexual flirtations, advances, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature, obscene language, gender- or sexually-oriented jokes, verbal commentary about an individual's body, sexual innuendo, and gossip about sexual relations;
- The display of derogatory or sexually suggestive posters, cartoons, drawings, or objects, or suggestive notes or letters or e-mails or text messages or in a public space;
- Visual conduct such as leering or making gestures;
- Sexually suggestive comments about an individual's body or body parts, or sexual degrading words to describe an individual;
- Unwanted kissing;
- Touching of a sexual nature such as patting, pinching or brushing against another's body;
- Cyber or electronic harassment of a sexual nature.

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

### **Non-Title IX Sexual Harassment**

While Title IX requires that the alleged conduct meet a certain threshold before it is considered Title IX Sexual Harassment, the University also prohibits unwelcome conduct on the basis of sex (1) that may not rise to the level of Title IX Sexual Harassment (as defined above), (2) that did not occur in the University's education program or activity, but may nevertheless cause or threaten to cause an unacceptable disruption at the University or interfere with an individual's right to a non-discriminatory educational or work environment, or (3) that did not occur against a person in the United States.<sup>1</sup>

As used in this Policy, Non-Title IX Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following definitions.

i. ...

ii. **Non-Title IX Hostile Environment Harassment:** Non-Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex

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<sup>1</sup> Conduct cannot constitute both Title IX Sexual Harassment and Non-Title IX Sexual Harassment. Accordingly, if conduct is determined to be part of a finding of Title IX Sexual Harassment, then that conduct will not be separately analyzed as Non-Title IX Sexual Harassment.

determined by a reasonable person to be so severe or pervasive that it substantially and unreasonably interferes with an individual's employment or education, or creates an intimidating, hostile, or offensive employment or educational environment.

Examples of Non-Title IX Hostile Environment Harassment may include the same type of conduct listed above for Title IX Hostile Environment Harassment, when such conduct (1) does not rise to the level of being so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; (2) does not occur in the University's education program or activity; or (3) does not occur against a person in the United States.

**Unwelcome** conduct occurs when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

**On the Basis of Sex** as used in this Policy means when conduct is sexual in nature or is referencing or aimed at a particular sex.

**Reasonable person** means a reasonable person under similar circumstances and with similar identities to the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 5

#### **Excerpts from Party Statements in Response to the Directly Related Evidence**

##### Excerpt from Dr. Graham's Response to the Directly Related Evidence

In response to Chloe's discussion of my support of her social media and the self-branding project in my Marketing 101 course, I would like to emphasize that as a marketing professor I want to prepare my students for the industry, and a key piece of the industry is social media. Students must be able to show they are social media savvy and that they are able to self-brand properly on their own social media. The marketing industry continues to evolve, and I want my students to be a step ahead and to be able to acquire jobs they desire. My classroom projects and my real world application of personal branding and social media are critical for helping the students prepare for careers in marketing and to help them stand out to employers.

Additionally, Chloe submitted some text strands showing me saying I care about her – what is wrong with a professor caring about their students! As I stated in my interview with the investigator, I think it would be beneficial, as part of the investigation, to speak with other faculty members. I guarantee that you would see that all our professors work closely with their TAs and care for them as colleagues and mentors. Also, I cannot be the only professor that has ever used a student for a class demonstration. I believe other professors, particularly marketing professors, could speak to how this kind of exercise would be useful for teaching and how I have the right to include it as part of the coursework.

## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 6

#### **Investigation Report Excerpt:**

##### **Background**

Chloe is a junior at the College and has attended the University since August 2022. Dr. George Graham has served as a full-time professor in the University Marketing Department since 2020. Both parties stated that they first met in January 2023 when Chloe was a student in Dr. Graham's Marketing 101 course.

Both parties stated that they would often interact in group settings during that first semester. Both parties stated that Chloe would attend group office hours typically twice a month. Dr. Graham stated that Chloe was an active class participant and received strong grades in the course. Chloe stated that she enjoyed Dr. Graham as a professor and that it was because of Dr. Graham that she decided to declare as a marketing major.

Both parties stated that beginning in August 2024, Chloe took Dr. Graham's seminar course. Both parties stated that as part of the seminar course, each student had weekly one-on-one meetings with Dr. Graham for the last two months of the semester to discuss their paper. Dr. Graham stated that Chloe was "very open" and shared about her personal life. Dr. Graham stated, "I think understanding a little bit about each of my seminar students' personal life goals is helpful in helping students think through their career aspirations." Both parties stated that in one of their final meetings of the fall semester, Dr. Graham asked Chloe if she would consider serving as his TA for the spring semester and that Chloe said yes.

Both parties stated that in January 2025 Chloe and Dr. Graham met to discuss what the TA position would entail, including the time commitment and some of Dr. Graham's ongoing projects that Chloe would be assisting with. When asked about Chloe's typical responsibilities as his TA, Dr. Graham stated, "She helped grade assignments, completed some research for my current papers, and would occasionally assist in teaching the class." When asked to describe what her assistance with teaching would look like, Dr. Graham stated, "Sometimes, if I was away for a conference or something, she would lead the class as I would, but when I was there, she may lead small groups or help individual students."

Both parties stated that in that January meeting they exchanged phone numbers. Chloe stated, "Honestly, I felt a little weird about giving a professor my number and I was like, 'why can't we just communicate through email?'" When asked if she asked Dr. Graham, "why can't we communicate through email?" Chloe stated, "I didn't say that out loud, I just thought that in my head. At that point, I just felt like I needed to make a good impression as his TA, and I was

worried that not sharing my number would make things weird with Dr. Graham.” Dr. Graham stated that he exchanged phone numbers with all his past and present TAs, and “I feel like calling and texting is just easier than email. Kids are more accessible on their phone. Students typically struggle with checking their email.”

When asked if they communicated through other methods, Chloe stated, “Early on, maybe sometime in late January, I got a notification that Dr. Graham had added me on Snapchat. I added him back, not thinking much of it. I barely post on my story and I figured we would never use it. We didn’t communicate on Snapchat right away, but he used it later on in the semester, for sure.” When asked if he communicated with Chloe through other methods besides calling and texting, Dr. Graham stated, “After we exchanged phone numbers in January, I added her on Snapchat. So when I added Chloe’s phone number in my contacts it must have caused the app to suggest her. I went ahead and added her. It’s not a big deal. I’ve had other TAs on Snapchat before, both male and female students.” When asked who were his TAs in recent years, Dr. Graham stated, “Last year was Josie and the year before that it was Kayla.” When asked if he’s ever had male TAs, Dr. Graham stated, “Well my very first TA here at the University was a male student. His name was Isaac. I could get his last name if you need it.”

Chloe stated, “Initially, throughout like all of January, there wasn’t necessarily anything wrong, it was just like he would call or text me once or twice a week. And most of the time the conversation would be about my TA stuff, but also every once in a while he would ask about other stuff. I mean, after our seminar last semester, I was used to that, it was normal to talk about my family or whatever. It didn’t exactly bother me until later when the other stuff happened.” When asked what she was referencing when she said “he would ask about other stuff,” Chloe stated, “Oh, just like my family or, for a lot of the semester I was stressing about finding an internship, so we would talk about that too, maybe weekend plans, that kind of stuff. Honestly, I didn’t even think much of the personal stuff until he started asking like who I was dating or whatever. Or if I told him I had a date coming up, he would ask how it went and stuff. Not necessarily in detail, just like where we went to eat or if I thought there would be a second date or something like that.”

When asked how often he would communicate with Chloe at the beginning of the spring semester, Dr. Graham stated, “Like with all of my previous TAs, I would connect with Chloe once or twice a week to touch base on the current projects Chloe was working on for me.” When asked if they spoke about Chloe’s personal life, Dr. Graham stated, “Well sure, just in the course of conversation, we would talk about anything. It was just natural conversation to talk about weekend plans or just any life stuff.” When asked if he spoke with Chloe about her dating life, Dr. Graham stated, “I don’t know if I would say I spoke to her about her dating life, but there was once or twice where she mentioned she had a date and I asked her how it went.”

## Witness Accounts

Marcy stated that she was a student in Dr. Graham's Marketing 101 course in Spring 2023 and is currently a junior majoring in accounting at the University. Marcy stated that she met Chloe their freshman year and became friends "almost immediately." Marcy stated that she did not notice anything "unusual" about Chloe and Dr. Graham's interactions during their Marketing 101 course. Marcy stated, "I feel like stuff started getting weird when Chloe became his TA. Like, I'm a TA too for one of the accounting professors here, and they definitely don't talk to me as much as Dr. Graham talked to Chloe." When asked how often Dr. Graham was communicating with Chloe, Marcy stated, "Well I don't really know how often, but it seemed like he was always texting or calling her."

Noah stated that he was a student in Dr. Graham's Marketing 101 course in Spring 2025 and that Chloe served as the TA for the course. Noah stated, "I heard that Chloe and Dr. Graham were close, but it didn't really surprise me. I for sure thought it was weird, but honestly, he isn't the only professor in the Marketing Department that is like that with his TA." When asked what he meant by "like that with his TA," Noah stated, "I don't know, I just get a different vibe from a couple of the professors in the Marketing Department. Many of them have TAs and they just seem overly familiar with them – like, putting their arm around their shoulders or standing really close to them when they are talking to them. I have classes in other departments that have TAs but the professors don't act like that with them."

## **Chloe's Allegation of Sexual Harassment**

### The Parties' Text and Phone Communication in February 2025

#### *The Parties' Communication in Early February*

##### *Chloe's Account*

Chloe stated that in February 2025, Dr. Graham began to ask more personal questions. Chloe stated, "At first, I didn't mind all the personal questions. It was casual, like once he asked if I liked dogs and he told me about his golden retriever, Duke. Also, in that conversation I told him about my pets growing up and stuff like that." Chloe stated, "Shortly after we had that conversation, he asked if I could go to his house while he was gone for a conference for a couple days. I think it was like just Tuesday to Wednesday, kind of thing. He asked if I could just go over there each morning and night and let Duke out in the yard to run around for a little bit and go to the bathroom or whatever." When asked how she responded to Dr. Graham, Chloe stated, "Oh, yeah, I said yes. I went over there, I think once Tuesday night and once Wednesday morning, and each time I was there, I just texted him a picture of Duke and a message letting Dr. Graham know that I was taking Duke for a walk and he was all taken care of. It wasn't a big deal at all." When asked when she went over to his house, Chloe stated, "It was sometime in early

February.” When asked how Dr. Graham responded to her message, Chloe stated, “He said something like, he looks happy. You’ll have to come again sometime.” Chloe provided the following screenshot of this text exchange:



When asked if she was okay with going to Dr. Graham’s house when he was not there to let Duke out, Chloe stated, “I was fine with it at first. I mean, I love dogs. But that message kinda weirded me out like he was inviting me to come hang out at his house with him.”

Chloe stated, “But by later on it got to the point where every week he was asking about my weekend plans. It made me a bit uncomfortable since obviously I don’t need to be telling my professor every time I’m getting drinks or going out with friends.” Chloe stated, “One time, I can’t remember the day, but I mentioned I was going to FAC – Friday after Class – at Peggy’s because of their great happy hour and he said that sounded fun. And then I said something about how I was interested in trying this new place that also supposedly had a good happy hour. Then he was like, ‘Oh yeah I heard about that place opening. Maybe we could go together and check it out sometime.’” When asked how she responded, Chloe stated, “I thought he was kind of joking. It was weird, but I just laughed it off.” When asked if this was an in-person conversation, Chloe stated, “No, it was over the phone. Probably on one of his Friday check-ins.”

### *Dr. Graham's Account*

When asked if he ever talked to Chloe about her personal life, Dr. Graham stated, “Yes. I’ve already shared a couple of examples with you. I don’t remember the specifics of every conversation. I know we talked about her job search a lot, she was really stressed about it.” When asked if he shared about his personal life with Chloe, Dr. Graham stated, “We got close over time. I talked to her about my dog, Duke, my family a little bit, stuff like that.” When asked what he would say about his dog, Dr. Graham stated, “Nothing specific comes to mind. She shared how she loved dogs and how she had a golden retriever when she was a kid. I asked her once to let Duke out when I was out of town for a day for a conference speaking event. I think that was in early February.” When asked if he communicated with Chloe while he was out of town at his conference, Dr. Graham stated, “Yes, each time she went over to the house, she would text me a picture of Duke and let me know how he was doing.”<sup>2</sup> When asked how he responded to those messages, Dr. Graham stated, “I probably just said ‘thanks’ or would like the message.” When provided an opportunity to respond to the screenshot of the text exchange provided by Chloe in which Dr. Graham responded to a photo of Duke by saying, “He looks happy, maybe you’ll have to come around more often,” Dr. Graham stated, “I don’t remember saying that, but I know I didn’t mean anything inappropriate by it.”

When provided an opportunity to respond to Chloe’s account about Dr. Graham suggesting they go to the new restaurant/bar, Dr. Graham stated, “Yeah, that sounds familiar, I think she mentioned that she was getting drinks with her friends and I said something that we could grab drinks sometime after our Marketing 101 course. I did this with some of my former TAs and they seemed to appreciate having a professor they could connect with.” When asked how Chloe responded to his suggestion, Dr. Graham stated, “She maybe said, ‘yeah that would be fun sometime,’ or something like that but we didn’t end up ever getting drinks together.”

### *The Parties' Communication on February 14 and 15*

#### *Chloe's Account*

Chloe stated that February 14 (“Valentine’s Day”) “stuck out” in her memory as a time where Dr. Graham made “a weird comment.” Chloe stated, “Dr. Graham talked to me so many times, they all kind of blur together but, one thing, I do remember is Valentine’s Day. It was a Friday, and Dr. Graham usually would call on Fridays and we would talk through how my week went and my work for next week. Sometimes, I guess kind of often, he would also ask about my weekend plans.” Chloe stated, “So, yeah, he called me the morning of Valentine’s Day and asked what I was doing that weekend. I said, ‘not much,’ and then he kind of laughed and was like, ‘Oh sure, I

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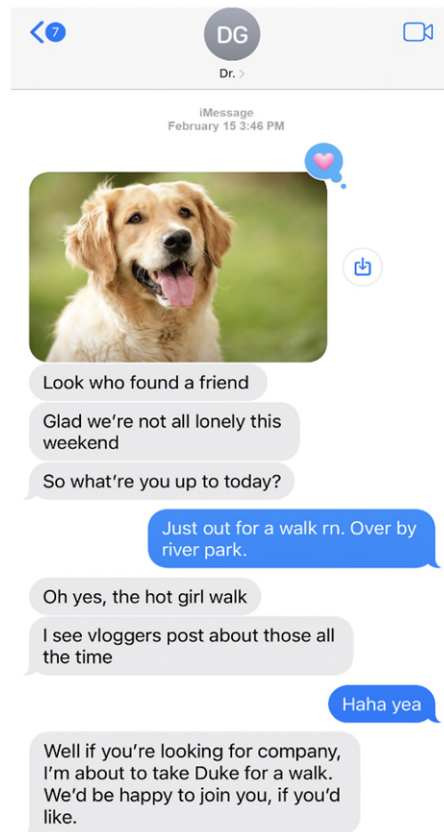
<sup>2</sup> Attachment A: Text exchange between Chloe and Dr. Graham on February 4, 2025 at 8:34 p.m., provided by Chloe.

bet that's not true. I find it hard to believe someone like you doesn't have a date' or something like that." Chloe stated, "He kept going, saying something about his wife, I don't remember exactly what it was but something like, 'Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again.'" When asked who Brittany was, Chloe stated, "His wife. I knew he was married, like it might have been in his bio or something, but he had never talked to me about his wife before like that." When asked how she responded to Dr. Graham's statement, Chloe stated, "I kind of just half-laughed and was like, 'Well golden retrievers do make good company so that doesn't sound too bad.' I was trying to make it less weird." When asked what happened next, Chloe stated, "I think I just changed the topic to the upcoming midterms exams or something like that."

Chloe stated that the next day, Saturday, Dr. Graham texted her. Chloe stated, "I remember that before that, before Valentine's Day, he had never texted or called me on the weekend before. But that was kind of the start of it." Chloe stated, "It was kind of weird, like yes, because it was on the weekend, but honestly more so just the stuff he was saying. Here, let me pull it up. Oh right, so he sent me a picture of his dog and was like, 'Look who found a friend,' that's how it started." Following her initial interview, Chloe provided screenshots of the text conversation from February 15, 2025 starting at 3:46 p.m.<sup>3</sup>:

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<sup>3</sup> Attachment B: Text exchange between Chloe and Dr. Graham on February 15, 2025 at 3:46 p.m., provided by Chloe.



When asked if the conversation continued after the last shown text in the screenshot, Chloe stated, “I didn’t respond to that last message. I don’t know, it was just kind of weird, and I certainly didn’t actually want to go on a walk with him but I didn’t want to make it awkward. It’s not like I could just stop working with him and a reference letter down the road would be nice. So I just didn’t respond. I told him that next week that I must’ve missed his text.”

#### *Dr. Graham’s Account*

When asked if there was a day of the week he would typically do a check-in call with Chloe, Dr. Graham stated that it was usually Friday morning. When asked if he could recall any specific Friday morning conversation, Dr. Graham stated, “not really.”

When asked in a follow-up interview if he spoke with Chloe on Friday, February 14, Dr. Graham stated, “Probably, I typically checked in with her on Fridays.” When asked to describe the conversation on February 14, Dr. Graham stated, “I don’t recall the specifics. Maybe I asked her what she was doing that weekend, see if she had any special plans.” When asked if he ever spoke

with Chloe about his wife, Dr. Graham stated, “I maybe mentioned her at times, but I don’t recall discussing Brittany extensively with Chloe.”

When provided an opportunity to respond to this portion of Chloe’s account regarding their February 14 conversation, Dr. Graham stated, “I did not say, ‘I find it hard to believe someone like you doesn’t have a date’ but maybe I said that thing about Brittany and basketball, it sounds like something I would say.”

When asked if he ever talked to Chloe on the weekend, Dr. Graham stated, “not regularly, maybe like just a picture of my dog or something.”

When asked in a follow-up interview if he ever asked Chloe to hang out with him outside of school, Dr. Graham stated, “She loved my dog, Duke, and I think once I suggested we take Duke for a walk or something. She didn’t end up coming though.”

When provided an opportunity to respond to the portion of Chloe’s account regarding their text conversation on February 15, Dr. Graham stated, “I guess I did send those messages, but she’s taking it way out of context. She had told me months ago that she was kind of an influencer on TikTok for videos about her day. I was just trying to encourage her self-marketing, which is really important in the industry. Also, I, in no way, intended it to be ‘weird.’”

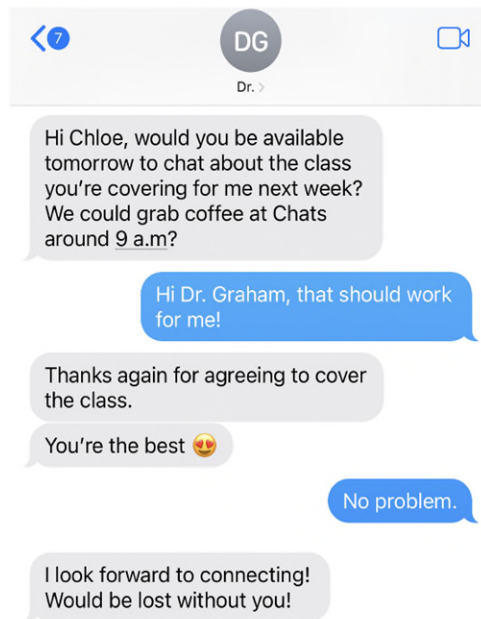
### *The Parties’ Interactions on February 24 and 25*

#### *Chloe’s Account*

Chloe stated, “I feel like stuff just progressed after that Valentine’s Day weekend, like he just kept talking to me more, commenting on my hair or clothes, or like inviting me to do stuff outside of school. It was like he would try to make it about school but that was just a cover for spending time with me. I didn’t see it at first but over time it just got weird.” When asked what he would invite her to outside of school beyond the previously mentioned restaurant/bar and dog walk, Chloe stated, “There was one time, maybe sometime toward the end of February, he messaged asking to get coffee to discuss the upcoming class that I would be covering for him. The Valentine’s Day thing was still kind of stuck in my head, but I agreed to go because it was about school, and I did have a few questions about the class I was covering.” Chloe provided screenshots of a text exchange from February 24, 2025 at 5:47 p.m.<sup>4</sup>:

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<sup>4</sup> Attachment C: Text exchange between Chloe and Dr. Graham on February 24, 2025, provided by Chloe.



When asked to describe what happened the next day when they got coffee, Chloe stated, “I mean it was kind of just normal. We talked about preparing for the class, he bought me coffee. I mean it’s not like it was the first time we were together alone since I was TA. He did mention something about him and his wife thinking about separating, that was weird. I kind of forgot about that, but now that I’m looking back, that was definitely out of place. Like he was talking about being out of town for his conference, but his wife wouldn’t be traveling with him this time and started kind of getting into it.” When asked what she meant by “getting into it,” Chloe stated, “He just said that they have been growing distant, something about living separate lives and that they are probably going to do a trial separation.” When asked what her response was, Chloe stated, “I think I just kind of nodded. I really didn’t know what to say. But then he switched topics, just said, ‘Oh well, life keeps moving on,’ or something like that.”

Chloe stated, “Oh my gosh, I just remembered, at that point he kind of grabbed my hand. Yeah I totally forgot about that.” When asked to further describe Dr. Graham grabbing her hand, Chloe stated, “So, before he changed topics, I said something like, ‘I’m sorry, that must be really hard.’ Then, I guess he didn’t really grab my hand, but he rested his hand on mine and said something like, ‘Thanks. It means a lot that I can be real with you.’” When asked how long he rested his hand on top of hers, Chloe stated, “It was there for like less than five seconds because I moved my hand away.” When asked how she felt about Dr. Graham placing his hand on hers, Chloe stated, “It was so awkward, especially him talking about his problems with his wife. I brushed it off at the time, but now looking back, I should’ve realized early on he was weird.”

### *Dr. Graham's Account*

When asked about spending time with Chloe outside of school, Dr. Graham stated, "One time we got coffee. Chloe was about to cover a class for me, and I suggested we get coffee at this coffee shop just off campus called Chats to discuss the class. She didn't seem to have any issues with meeting up outside of school. Again, it wasn't like I hadn't met with other TAs to get coffee before." When asked how the idea of getting coffee came up, Dr. Graham stated, "I texted her and she said yes."

When asked to describe their conversation at the coffee shop, Dr. Graham stated, "We just talked about the class she was covering, the conference I was speaking at, stuff like that." When asked if they talked about either of their personal lives during their conversation at the coffee shop, Dr. Graham stated, "I mentioned that my wife wouldn't be attending the conference with me. I mentioned that because previously Brittany had traveled with me and that's when Chloe had to let my dog out, but she wouldn't need to do that since Brittany was staying back at the house." When asked how Chloe responded to him talking about his wife, Dr. Graham stated, "She didn't really respond any specific type of way. Like it was just mentioned in passing, it was not a full-blown conversation."

When asked in a follow-up interview, if they touched during the conversation at the coffee shop, Dr. Graham stated, "Touched? No, I don't think so. I don't recall hugging or anything like that."

When provided an opportunity to respond to Chloe's account that Dr. Graham told her that his wife would not be going to the conference with him and that they were going to do a trial separation, Dr. Graham stated, "I was just explaining why Brittany wasn't going with me." When provided an opportunity to respond to Chloe's account that Dr. Graham placed his hand on top of hers and said "It means a lot that I can be real with you," Dr. Graham stated, "I don't specifically remember that, but I do express myself with my hands, so I could see myself briefly touching her hand to emphasize my point, but it certainly wouldn't have been anything sexual and I don't think there's anything wrong with saying that it is nice to be able to be real with someone."

### The Parties' and Witnesses' Communication in March 2025

#### *The Parties' Communication in Early March*

##### *Chloe's Account*

Chloe stated, "The texting and calling just continued like normal after the coffee thing. I just wanted everything to be normal. So I would talk to him about TA stuff, my internship, things like that. And I was like fine talking about my family and stuff." When asked if she initiated any text conversations with Dr. Graham, Chloe stated, "I mean not usually, but maybe, I guess probably

about internship stuff since I was stressed and he was helping me navigate the process, like looking for open positions. Nothing else specifically comes to mind.”

When asked about her earlier statement that Dr. Graham would comment about her hair and clothes, Chloe stated, “Yeah, like I started kind of noticing it in March. It was always when I would do something out of my normal. Like one day I curled my hair, which I don’t normally do, and when he saw me, he was like, ‘new hairstyle is looking good’ or something cringy like that.” When asked how the comment made her feel, Chloe stated, “I don’t know, I guess, like I said, cringy. Just kind of awkward. But again I didn’t want to make a big deal about it.” When asked if there were other comments Dr. Graham made about her appearance, Chloe stated, “Well, it wasn’t like every time I saw him, it would just kind of happen throughout, like the whole semester. But there was another time shortly after that hair thing, maybe it was our last class before spring break. I had a big presentation in one my other classes earlier that day so I had dressed up, like in a dress, which again is not my normal, and when I walked into Dr. Graham’s class, he was like, ‘Looking sharp, Chloe.’” When asked how that comment made her feel, Chloe stated, “Similar to the hair. Like in the moment I thought it was weird but didn’t feel like it was a big enough deal to say anything to him. But now, like in combination with everything else, it does make me uncomfortable that he was paying attention enough to notice when something was different.”

#### *Dr. Graham’s Account*

When asked to describe his and Chloe’s interactions after the coffee interaction, Dr. Graham stated, “The were normal. Nothing changed. I don’t know why anything would have changed. We kept doing our weekly check-ins and working on projects together.” When asked if they spoke about anything else in the couple weeks following the coffee interaction, Dr. Graham stated, “I can’t say for sure but probably the other things we usually would talk about. Like her internship search or maybe her family, major things going on in our lives.” When asked if he assisted Chloe in her internship search, Dr. Graham stated, “Yeah. Chloe was such a deserving student, and her work ethic really shined through her TA work. So yes, I told her early on in the semester that I would love to assist her in helping find an internship.” Dr. Graham stated, “I think it is important for you to know that I wasn’t the one to initiate all of the text messages. There were several times when Chloe would text me to tell me something about her family or ask for restaurant recommendations and things like that.”<sup>5</sup> When asked if he could provide a

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<sup>5</sup> When provided an opportunity to respond to Dr. Graham’s account that there were several times when Chloe would text him to tell him something about her family or ask for restaurant recommendations and things like that, Chloe stated, “So I like I messaged him one time telling him my grandparents were coming because I wanted his advice on restaurants to take them to, something a little higher end than places my friends and I go.” Attachment D: Screenshot of text message exchange between Chloe and Dr. Graham on March 3, 2025, provided by Chloe.

copy of those messages, Dr. Graham said that “My phone is set up to automatically delete messages after a month to save storage space, so I don’t have those messages.”

When asked if he would ever comment about Chloe’s appearance, Dr. Graham stated, “Nothing specifically comes to mind.” When asked in a follow-up interview if he ever commented about Chloe’s hair, Dr. Graham stated, “Maybe when she got it cut or styled it differently. Like she almost always wore it up in a ponytail, so if she did something different I maybe would say like, ‘Nice hair.’” When asked if he ever commented about Chloe’s clothing, Dr. Graham stated, “Again, maybe if there was something different. Like I think once she must have had a presentation for one of her own classes and she dressed up, like in professional attire.” When asked if he knew when that comment was, Dr. Graham stated, “I don’t know for sure, sorry.” Dr. Graham stated, “And I would just like to add, it wasn’t like I said stuff to Chloe regularly, like once or twice, and it wasn’t like I was trying to single her out. I would comment on other students’ hair or outfits or style or whatever if they switched up.” Dr. Graham stated, “I’m a marketing professor. I want students to be mindful of how they present themselves. So if they look professional and put-together, I’m going to point it out.

### *The Parties’ and Witness’s Communication on March 14*

#### *Chloe’s Account*

Chloe stated that during the University’s spring break in March, Dr. Graham responded to a photo she posted of herself in a bikini on her Snapchat story. Chloe stated, “Okay, so, another really weird thing that he did was during spring break. So, like I said, he had added me on Snapchat like way back in January and I was like ‘whatever we’re not going to use it.’ Well while I was in Mexico, I posted a Snapchat story with a picture of me in a bikini.” Chloe stated, “Honestly, I would say it was embarrassing to know a professor saw a photo of me in a bikini, but in the moment, I didn’t even realize that Dr. Graham could see the picture. I didn’t think about how we had each other on Snapchat.”

Chloe stated, “It wasn’t until later that night that I remembered that I had added Dr. Graham on Snapchat because I got a Snapchat notification saying George responded to my story. At first, I was literally like ‘who the heck is George’ but then I remembered Dr. Graham and the whole Snapchat thing.” Chloe stated, “I immediately showed the notification to my friend, Marcy, and she said the same thing, ‘Who is George? I thought you always keep me in the loop on the guys you’re seeing’ or something like that.” When asked how she responded to Marcy’s question, Chloe stated, “Oh, I just told her it was Dr. Graham and how he had weirdly added me on Snapchat back in January. And she was like, ‘That’s weird,’ or ‘that’s creepy.’” Chloe stated, “So then I opened his Snap and it said like ‘looks like you’re having a good time on spring break’ and then he said something about it looking hot there. Then he sent a picture of his dog and it said something like ‘miss you’ with a heart emoji. And Marcy was like, ‘Oh my gosh, Chloe, you cannot TA for him again, he is being so weird.’” When asked if both the “looks like you’re

having a good time” message and the dog message were photo messages, Chloe stated, “No, the first message was just text and the second one was a picture with the ‘miss you’ comment.” When asked how she responded to Marcy’s comment that Dr. Graham was being weird, Chloe stated, “I told her a little bit about some of the other stuff, but mostly I was just trying to downplay the situation and rationalize everything, because I was still going to go back and finish out the semester TA-ing for him. I needed his help getting an internship. So I think in the moment I said something like, ‘I think maybe Dr. Graham is talking about how the dog misses me.’ Although, honestly, it’s still weird because I only saw his dog two times when Dr. Graham was out of town and I walked Duke.” When asked what she meant by “some of the other stuff,” Chloe stated, “Just some of the weird stuff that had happened. I don’t remember exactly what I shared with her. Maybe about the message he sent me when I helped with his dog and the coffee. I’m not sure.”

When asked what she was doing at the point of seeing the notification and showing it to Marcy, Chloe stated, “We were at the AirBnb getting ready to go out that night.” When asked at what point Dr. Graham responded to her Snapchat story with the photo of Duke, Chloe stated, “Probably around 10 p.m. That was the other thing, I feel like the later into the semester it got, the more likely he would be texting me or Snapchatting with me at any point in the day or on the weekend, not just the normal 9-5.” When asked if she responded to Dr. Graham’s Snapchat, Chloe stated, “No, I just ignored it.”

#### *Dr. Graham’s Account*

When asked if he would communicate with Chloe outside of calling, Dr. Graham stated, “As the semester progressed, it felt more natural to text her sometimes and we got to know each other better so I would send her Snapchat pictures of my dog, Duke, she loved him.” When asked who would initiate the text and Snapchat conversations, Dr. Graham stated, “Either one of us, sometimes me, sometimes her.” When asked if he ever responded to a Snapchat story that Chloe posted, Dr. Graham stated, “I think I may have once when she posted about spring break.” When asked how he responded, Dr. Graham stated, “I just sent a picture of my dog and said something about Duke missing her.”

When provided an opportunity to respond to the portion of Chloe’s account that he responded to her Snapchat story with a snap that said, “looks like you’re having a good time on spring break” and commented about it looking hot there, Dr. Graham responded, “I don’t specifically recall saying that, but I do remember sending her a message.” When provided an opportunity to respond to the portion of Chloe’s account that he also sent a snap that included a picture of Duke and a message that said “miss you” with a heart emoji, Dr. Graham stated, “I do remember sending that, but I thought I said ‘Duke misses you’ but even still, if I said ‘miss you’ I was referring to Duke since she had previously taken care of him and we had talked about him multiple times.”

### *Marcy's Account*

When asked to describe Dr. Graham, Marcy stated, “I mean, Dr. Graham is nice, but I don’t know, he’s also kind of creepy.” When asked what she meant by “creepy,” Marcy stated, “Like this one time while Chloe, me, and some other friends were on spring break in Mexico, Chloe posted a picture of herself in a bikini to her Snapchat story.” Marcy stated, “Later that night, Chloe told me that Dr. Graham had responded to her story. She showed it to me. It was a picture of his dog and it said ‘miss you’ with a heart emoji. And he said something about it looking hot. I honestly was so grossed out by that, but I don’t know, Chloe was TA-ing for him so she just kind of brushed it off.” When asked if Chloe responded to Dr. Graham’s Snapchat, Marcy stated, “I don’t think so, I hope not, but I’m not sure.” When asked what time Chloe shared the Snapchat message notification with her, Marcy stated, “We were all getting ready to go out. I’m not sure what time it was, maybe like 10 p.m.”

When asked if Chloe said anything about Dr. Graham at that point, Marcy stated, “Yes she did. When she showed me the notification, I think I said something like ‘that’s weird,’ and then she kind of mumbled something about how this weird stuff was kind of normal for him. Like how he made some comment to her about not having a date for Valentine’s and would talk about problems with his wife and stuff. But, I don’t know, I feel like she also said something about he’s helping her find an internship and she wants to be nice to him.” When asked how she responded to Chloe’s statements, Marcy stated, “I told her that I didn’t think this was normal and that I thought she needed to be careful and that she shouldn’t TA for him again next semester, because he was just being creepy.”

### *The Parties' and Witnesses' Interactions on March 18*

#### *Chloe's Account*

Chloe stated that in the week after she returned from spring break, she “tried to forget about the beach photo thing.” When asked when the next time she interacted with Dr. Graham was, Chloe stated, “It was our first day back of Marketing 101. It was whatever that Tuesday was. Let me see, probably like March 18.” Chloe stated, “It was shortly before class was supposed to start. I went to his office to get the midterm exams and Dr. Graham was like, ‘Hey Chloe, looking tan, must have gotten some good sun in Mexico.’ Just like another weird comment, like I said earlier, it just is progressively more and more. But anyways, he continued by asking if I had fun. I said ‘yeah, it was fun.’” When asked how the conversation continued, Chloe stated, “I asked him how his spring was and then he started getting into it. He like said something about moving out of the house with his wife and into his own apartment and he just spent the week sad and sitting around feeling sorry for himself.” Chloe stated, “Then he said something like, ‘it’s good to have you back,’ and brought up that he had gotten me some white chocolate Reese’s peanut butter cups.” Chloe stated, “Honestly, that was so out of the blue. Like I didn’t ask for them or anything, but what’s really creepy is it’s my favorite candy, but like the white chocolate ones specifically,

which I feel like that being someone's favorite is not normal. I don't know how he even knew that." When asked how the conversation made her feel, Chloe stated, "At this point, I was uncomfortable, but I didn't know what to do, like I needed to keep communicating with him to finish out my TA job for the semester and I was worried that if I said something, he might not help me with my summer internship."

Chloe stated, "So another thing from that day, after that talk in his office, we went to class and after we finished handing back the midterm exams, Dr. Graham shared with the class that they would start prepping their end-of-semester final projects, focused on self-marketing. He does the same final project every year in Marketing 101, so I knew that this was coming. But what I did not expect was that he would have the class use me as an example and have them comment about me and my appearance and all that." When asked what she meant by "use me as an example," Chloe stated, "Dr. Graham wanted the students to brainstorm what the marketing could look like, and he was like, 'Now class, take Chloe here, she's a bright, fit, young woman, how would you all recommend she market herself to be attractive to marketing agencies, vendors, and the public?' and the students raised their hands and said stuff like focusing on the health and wellness space and partnerships with fitness influencers, stuff like that." When asked if she could recall any of the students' comments specifically, Chloe stated, "There was a student in the front, I believe his name was Noah. Noah was like 'Especially with how fit she is, Chloe could lean into modeling and highlighting active wear.' And then Dr. Graham agreed." When asked how she felt about Dr. Graham using her as a demonstration, Chloe stated, "It was really weird. Like when we did this project when I was a Marketing 101 student, we used some celebrity as the demonstration, not someone standing right there."

#### *Dr. Graham's Account*

When asked when he first spoke with Chloe after spring break, Dr. Graham stated, "Probably our first class period following spring break, that would have been March 20." When asked to describe the conversation, Dr. Graham stated, "I don't remember exactly, I would think just normal stuff like 'how was your trip?'" When asked in a follow-up interview if he gave Chloe anything during that conversation, Dr. Graham stated, "I mean I had purchased some of her favorite candy to thank her for all the hard work she'd done so far in the semester." When asked how he knew what her favorite candy was, Dr. Graham stated, "Oh she had told me at some point. I don't remember when."<sup>6</sup>

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<sup>6</sup> When provided an opportunity to respond to this portion of Dr. Graham's account on how he knew her favorite candy, Chloe stated, "Oh yeah, like way back when I took his seminar last year, I told him my favorite candy. But like kind of strange that he remembered it like more than a year later."

When provided an opportunity to respond to the portion of Chloe's account regarding their first conversation after spring break, Dr. Graham stated, "Yeah I maybe said she was tan, but only because she had that Snapchat story from the beach. I was probably just making a joke about it." When given an opportunity to respond to Chloe's account of him talking about moving into his own apartment, Dr. Graham stated, "Yeah, I'm sure that's true. Honestly, that personal stuff was impacting my mood in other parts of my life, including work. It was a tough time for sure." Dr. Graham stated, "Also, I don't think there's anything wrong with me saying I was glad she was back. A professor can care for the safe travels of their students."

When asked if he ever used Chloe for a class demonstration, Dr. Graham stated, "I'm not exactly sure what you mean by a demonstration. Like I never showed her previous work to the class or something like that. I guess, this is a little bit of a demonstration, but when the class was starting to prepare for their end-of-semester projects on self-marketing, I asked them to brainstorm starting with Chloe." When asked if he had communicated with Chloe prior to the demonstration, Dr. Graham stated, "No, I figured it would not be a problem since she was already building a TikTok and Instagram following." When asked what the students said about Chloe as part of the practice exercise, Dr. Graham stated, "They emphasized how fit she is, and how she would work well in health and wellness branding."

When provided an opportunity to respond to this portion of Chloe's account regarding Dr. Graham's use of Chloe for a self-marketing demonstration on March 20, Dr. Graham stated, "I'm not sure why this is even an issue. As a professor, I have every right to decide what content I want to cover in my classes. It is completely inappropriate for you to even be asking me about this given my academic freedom rights. As I said before, self-branding is so important for marketing professionals today, so it is critical that the students are able to practice highlighting personal strengths. In the past I had used a celebrity example but I think students struggle to think outside of how the celebrity has already branded themselves."

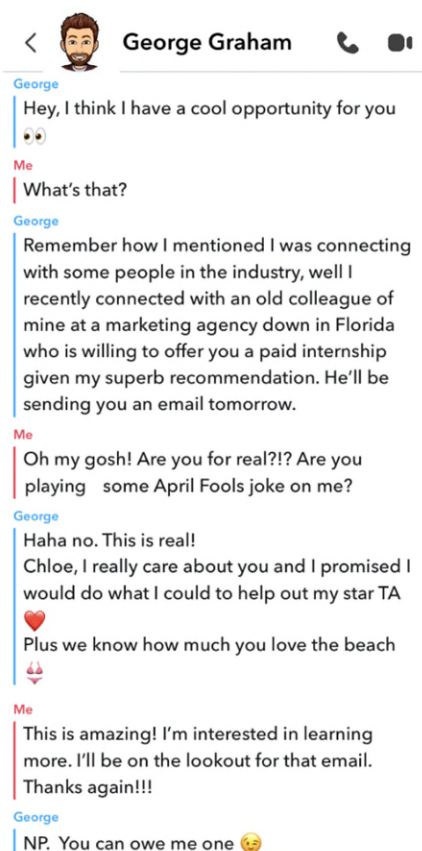
### *Noah's Account*

When asked if Dr. Graham ever made comments about the appearance of any of the students, Noah stated, "Mostly about his TA, Chloe. Sometimes, I would overhear him say that he liked her hair or her outfit or something like that. Also, there was this one time when he was introducing us to our final projects about self-marketing, he used Chloe as a demonstration and mentioned that she was fit, as in a healthy, active person." When asked to further describe the context of Dr. Graham's comment, Noah stated, "He asked us to practice by brainstorming marketing ideas for Chloe, and people went straight to health and wellness branding. I think I said something about modeling active wear and Dr. Graham said she had the right figure for that."

## The Parties' Interactions on April 1

### *Chloe's Account*

Chloe stated that Dr. Graham helped her get a marketing internship for this summer. Chloe provided the following Snapchat messaging exchange from April 1, 2025 at 11 p.m.<sup>7</sup>:



Chloe stated, “I was super excited about the internship opportunity but that ‘you can owe me’ message kind of stuck with me. I was honestly a bit nervous, like did he mean that he was expecting something in return, some kind of gross sexual favor? Like I don’t know, that’s probably a bit dramatic, but I don’t know. Also, this message was again late at night, probably around 11 p.m., so just extra weird. And the bikini reference was super creepy.” When asked how the conversation continued, Chloe stated, “Oh I took a screenshot of the chat to send a picture of it to my friends and family, and I told him that. Then he said something like, I insist on taking

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<sup>7</sup> Attachment E.

you out to dinner one night this week to celebrate.” When asked how she responded to that message, Chloe stated, “I didn’t respond. At that point I was really worried that he was expecting something inappropriate in return for his help. It felt really gross.”

### *Dr. Graham’s Account*

When asked if he used the text chat function on Snapchat to communicate with Chloe, Dr. Graham stated, “Every once in a while. When it made sense.” When asked if he ever ended up helping Chloe find an internship, Dr. Graham stated, “Yes. I was about to connect her with an old colleague of mine in Florida. Like I said, I am always happy to help out a deserving student.” When asked when this occurred, Dr. Graham stated, “April 1, I remember that because she thought it was an April Fool’s joke.” When asked in a follow-up interview how he notified Chloe about the internship opportunity with a colleague, Dr. Graham stated, “I think I messaged her on Snapchat, since that was our main form of communication at that point. Then my former colleague sent her an email to follow up.” When asked how Chloe responded to him connecting her with his colleague, Dr. Graham stated, “She was excited of course.” When asked at what point in the day he messaged her, Dr. Graham stated, “I think it was sometime at night. I wasn’t able to connect with my colleague until after the business day, but I wanted to let her know before he reached out the next day and since I didn’t know if he would reach out to her right away in the morning, I just messaged her later that night.” When asked what time he messaged her, Dr. Graham stated, “Maybe 9 or 10 p.m., which isn’t even late for most college students.”

When provided an opportunity to respond to the portion of Chloe’s account regarding Dr. Graham helping Chloe get a summer internship, Dr. Graham stated, “How is this even relevant? There’s nothing wrong with a professor caring about his students! And I was obviously joking about the favor. I feel like the winky face suggests that it is certainly a joke. She was wrong to assume I was implying something else. I would never ever do something like that.” When provided an opportunity to respond to the portion of Chloe’s account that Dr. Graham invited her to dinner, Dr. Graham stated, “I don’t think I insisted, but it’s not like there is anything wrong with a celebration. Again, there was nothing inappropriate about it.”

### *Marcy’s Account*

Marcy stated, “Even besides the swimsuit spring break thing, it was generally just weird that Dr. Graham was communicating with Chloe through Snapchat at all. Like I know professors think they can be all cool and hip or whatever, but I just don’t understand why he couldn’t just email her like a normal professor. But anyways, yeah, she facetimed me to tell me about the internship. She was really worried that Dr. Graham was expecting something romantic or sexual in return because of some comment he made about her ‘owing’ him and then insisting that she go out to dinner with him.”

## Events on Chloe's Social Media on April 11

### *Chloe's Account*

Chloe stated that Dr. Graham liked and commented on her videos on Instagram. Chloe stated, "The next kind of wild thing that happened was after I found out about that internship, I noticed that Dr. Graham had liked<sup>8</sup> and commented on one of my videos on Instagram." When asked what she was doing in the video, Chloe stated, "I do these day-in-the-life videos, and I think in this one I was just picking out my 'going-out' outfit. Like I had these cool transitions between different outfits and my followers could comment on their favorites. Dr. Graham commented a number and a fire emoji."<sup>9</sup> When asked to describe the outfits she was wearing in the video, Chloe stated, "I don't know, just typical going-to-the-bar stuff, like jeans and a tank top, but it's just weird because it's not the kind of stuff I would wear to class or that I would choose for my professors to see." When asked if Dr. Graham followed her on Instagram, Chloe stated, "I don't think so. I have a public account so you don't need to follow me to see my posts."

Chloe stated, "The following Monday after I noticed the Instagram thing, I asked Dr. Graham after class if we could go back to communicating through emails or texts instead of Snapchat. The thought had crossed my mind earlier, but I just kind of brushed it off but like between the spring break thing, 'owing him' for the internship, the dinner thing, the self-marketing project, the Instagram video, it was just getting too weird. I was already talking to another professor, Dr. Owens, about TAing for her next year, because I honestly just was so weirded out by Dr. Graham. I felt like I couldn't talk to many people about it because I didn't want them to judge me for sticking around as long as I did. But anyways, Dr. Graham said yes, although he didn't actually follow through on that."

### *Dr. Graham's Account*

When asked if he had seen any of Chloe's social media posts, Dr. Graham stated, "I didn't follow her or anything like that, but probably since we are in similar locations and she has such a big following, she would pop up on my for-you page on Instagram." When asked if he ever liked or commented on Chloe's social media, Dr. Graham stated, "I don't recall."

When provided an opportunity to respond to the portion of Chloe's account regarding Dr. Graham liking and commenting on her Instagram post, Dr. Graham stated, "I do not remember that specifically, but if it did happen, I'm a marketing professor supporting my student's self-

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<sup>8</sup> Attachment F: Screenshot of Dr. Graham's like on Chloe's Instagram post from April 11, 2025, provided by Chloe.

<sup>9</sup> Attachment G: Screenshot of Dr. Graham's comment on Chloe's Instagram post from April 11, 2025, provided by Chloe.

branding, it's part of my job.” When provided an opportunity to respond to the screenshot Chloe provided of Dr. Graham liking and commenting on her Instagram post, Dr. Graham stated, “Okay, so I did post that, but again, I don’t think there’s anything inappropriate about that.”

When asked if they continued to communicate on Snapchat, Dr. Graham stated, “Yeah, we did.” When asked if Chloe ever expressed concern about communicating on Snapchat, Dr. Graham stated, “One time she asked about switching back to text messaging. She didn’t say why, but I was fine going back to text messages instead of Snapchat, although I may have forgotten and kept using Snapchat.” When asked when Chloe had asked to switch back to texting, Dr. Graham stated, “Hmm, that was maybe sometime in mid-April.”

### The Parties’ Communication on April 17

#### *Chloe’s Account*

Chloe stated that Dr. Graham continued to communicate with her on Snapchat and asked her to attend an out-of-town conference with him. Chloe stated,

Literally later that week he Snapchatted me again, asking about taking a trip with him to a speaking event he had during finals week. Again, these messages were later at night, at least after 8 p.m. I told him no, that I wasn’t going to go with him. I think I made up some excuse like I needed to study for my exams, which I guess was partly true, but even so, there was no way I was going to sit in a car with him to drive two hours there and back. With the semester ending soon, I did not feel the need to do everything he asked of me anymore, especially this optional thing. At this point, I was just uncomfortable being alone around him.

When asked if she had screenshots of those Snapchats, “No, unfortunately I do not.” When asked how Dr. Graham responded to her saying she needed to study, Chloe stated, “He was like, ‘I’ll be lonely on the long drive without you, but I understand, exams are important.’” When asked how that comment made her feel, Chloe stated, “The whole conversation, the invite itself, that comment about being lonely. It all made me feel kind of nauseous actually, like I did not ask for nor want any of this extra attention.”

#### *Dr. Graham’s Account*

When asked if he Snapchatted Chloe again after their conversation about switching back to text messages, Dr. Graham stated, “I think so, because I forgot about her saying that.” When asked what he communicated with her about on Snapchat after their mid-April conversation, Dr. Graham stated, “Hmm at that point we had kind of wrapped up most our projects and the coursework was set to finish up there by the end of April. I was speaking at a conference during finals week in the first week of May, I think I invited her to that.” When asked where the

conference was, Dr. Graham stated, “In Plainsville, about two hours from here. I thought it would be a good opportunity for her, but she said no, that she needed to study for finals, which makes sense, it was kind of last minute.” When asked what time he sent these messages, Dr. Graham stated, “Probably sometime in the evening after I had wrapped up for the day.”

### The Parties’ Interactions on April 25

#### *Chloe’s Account*

Chloe stated that on April 25, Dr. Graham gave her a gift and then hugged her. Chloe stated, “And then he touched me again when we did our final meeting for the semester. I went into his office and he said goodbye and then he hugged me.” When asked to further describe the conversation, Chloe stated, “Well first he closed the office door, which made me kind of nervous but then he was saying thank you and how he was going to miss me and this kind of stuff. I was just trying to get it over with, I said thank you for the TA experience and the internship.” Chloe stated, “Also in that conversation, Dr. Graham asked to be his TA again next school year and said he would be lost without me. I really wanted to tell him no right then and there but, with being alone with him there, I felt a little trapped. So I just said I would need to see what my schedule ended up looking like, although I knew there was no way I was going to agree to serve as TA again.” When asked how Dr. Graham responded, Chloe stated, “He said something like, ‘sounds good,’ and to let him know what I figure out and that there would always be a spot for me as his TA.” Chloe stated, “Basically after he said that I got up to leave, and then he immediately also stood up and started approaching me, arms open. So I hugged him to get it over with, but Dr. Graham like held me kind of firmly, I guess, more so than I was doing to him that’s for sure.” Chloe stated, “And also, when he was hugging me, he was like rubbing my back, like in the small of my back.” When asked how long they hugged for, Chloe stated, “Maybe like 10 seconds.” When asked how long Dr. Graham was rubbing her back for, Chloe stated, “Almost like the whole time we were hugging, maybe eight seconds.”

Chloe stated, “After he gave me a hug, he grabbed a package from his desk drawer. He was like, ‘A parting gift to remember me while you are in Florida this summer.’ It was a journal with a palm tree on the front. Which the journal was nice, but there was this picture of him and Duke tucked inside the front cover. On the back of the photo it said something like ‘Have a great time in Florida, we will be thinking about you.’ I just threw that away because looking at, honestly even talking about it now, makes me nauseous.” When asked to further describe how she felt about Dr. Graham giving her this gift, Chloe stated, “I was honestly just done with him at that point. I was already in the mindset that I wasn’t going to work with him again next year, and I was going to do everything I could to avoid running into him, so I probably just said, ‘thank you’ to get it over with and left his office.”

### *Dr. Graham's Account*

When asked if he and Chloe ever hugged, Dr. Graham stated, "I think our last meeting of the semester we hugged. It's not a big deal, lots of professors hug their students." When asked to describe that last meeting, Dr. Graham stated, "We just talked about the summer and I asked if she wanted to be my TA again next year. Chloe wasn't sure since she was talking to some other professors but yeah, other than that, we didn't talk about anything substantive."

When asked if he ever gave Chloe a gift, Dr. Graham stated, "In that last meeting of the semester, I gave Chloe a journal. I almost always give my TAs a gift at the end of the year. It's just a small way of showing my appreciation for all they've done for me. But yeah, I gave her a journal, I think it had a palm tree on the front since she was going to Florida for the summer." When asked if he said anything when he gave her the gift, Dr. Graham stated, "Oh, probably just like 'thanks for everything' or something like that." When asked in a follow-up interview, if he gave her anything else with the journal, Dr. Graham stated, "There was a little card with a picture of Duke, wishing her good luck."

When provided an opportunity to respond to Chloe's account that he said, "A parting gift to remember me by while you are in Florida this summer," Dr. Graham stated, "I honestly do not remember, but I could have said that." When provided an opportunity to respond to Chloe's account that inside the journal there was a picture of him with Duke and a note that said "Have a great time in Florida, we will be thinking about you," Dr. Graham said, "Like I said, I remember including a picture of Duke and wishing her luck, but I didn't say we'd be thinking of her."

### The Parties' Interactions After April 25

#### *Chloe's Account*

When asked if they interacted again after the April 25 instance in Dr. Graham's office, Chloe stated, "Not much. I was just tired of him. He snapped me a couple times early in the summer – late May-ish to check up on me. He would just be like 'Hey, how's it going?' or I think one time he asked me about Frankie, his former colleague who helped get me the internship position. I think I responded to that one, just saying that Frankie was already a great mentor and how he would tell old stories about working with Dr. Graham. I don't think I responded to anything else." When asked why she decided to stop responding to Dr. Graham, Chloe stated, "It was just too weird, and frankly, inappropriate. I guess the extra time in the summer just got me really thinking about everything. I was thinking about how there was basically no guarantee I could avoid him next school year. Like the marketing department isn't that big. And then one day I was talking with a friend and I just started rambling about everything going on, everything in my head. It was kind of the first time verbalizing all my thoughts, like about the hug and back rub, the gift, the little comments, how the only other how everything just made me so uncomfortable." When asked how Lana responded, Chloe stated, "She just said that all the stuff,

the hug, the gift, the little comments, she was like, “Chloe, that is not okay. You should not feel this anxious about being around a professor. You should talk to the Title IX office, I had friend work with them before, and it was super helpful.” When asked when she had this conversation with Lana, “I think it was right around Memorial Day, basically right before I filed with Title IX.”

#### *Dr. Graham’s Account*

When asked if they interacted again after the last meeting in his office, Dr. Graham stated, “I had messaged her to check in on her, see how her internship was going. Eventually she stopped responding. I assumed she got busy, but then I got the Title IX notice, and I was just so confused. I never wanted her to feel uncomfortable or anything like that.”

#### Impact

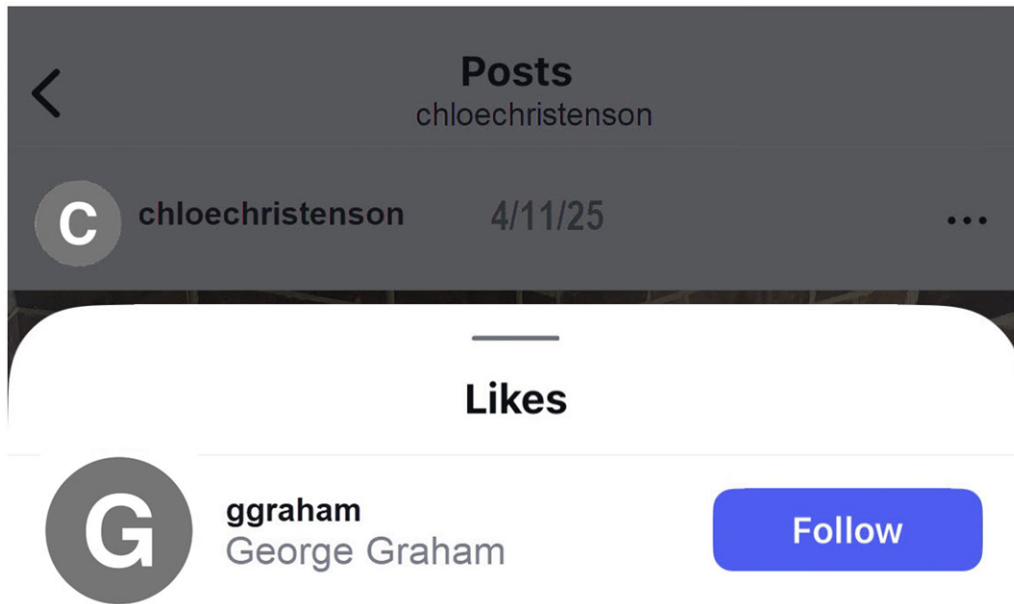
#### *Chloe’s Account*

Chloe stated, “I wasn’t even sure about bringing all this forward but as I thought about returning in the fall and having to see him and potentially interact with him, I was just so uncomfortable and anxious, and with Lana encouraging me to talk to Title IX, it just seemed like it was finally time to do something.” Chloe stated, “At least this is all happening over the summer, but I’m not looking forward to seeing him in the fall. Of course, I’m going to try to avoid him, but the university isn’t that big, I’ll probably end up seeing him again.” Chloe stated, “Also, I started thinking like has he even ever had any male TAs, or is he just picking girls because he likes to talk to them all the time? Like the year I was in Marketing 101, his TA was Josie and then last year it was Kayla. I mean, it could be a coincidence but after thinking, I’m starting to wonder if he’s just a true creep doing this with all of his female TAs.”

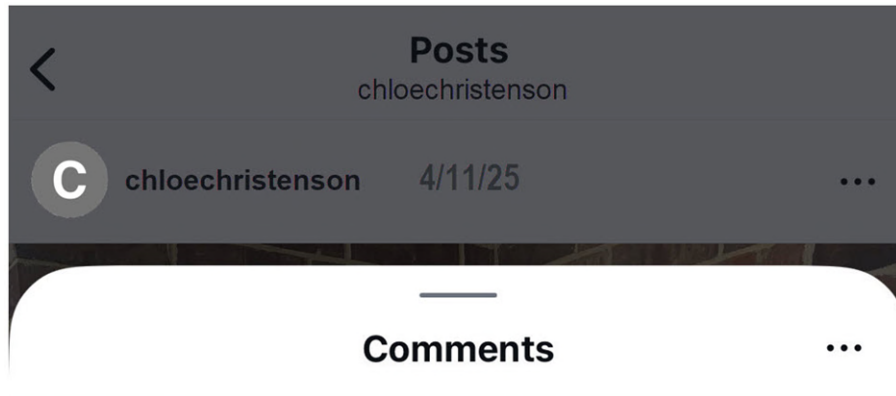
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## **2025 Conducting a Live Hearing Under Title IX/VAWA Training**

### **Handout 7**

#### **Excerpts from Party Statements in Response to the Investigation Report**

##### Excerpt from Dr. Graham's Written Response to the Investigation Report

In response to Marcy claiming I am a “creep,” I want to note that several of my students have provided thoughtful and positive feedback. I would love to have some of them speak on my behalf, but unfortunately that was not permitted in this process.

Also, after reading the directly related evidence and the entirety of the report, I am saddened to learn (for the first time) that Chloe felt this way about me. I never intended anyone to feel uncomfortable. My comments and such were always meant to be friendly and inviting, never anything inappropriate.

## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 8

#### **Summary of Witnesses at Hearing**

In addition to hearing from the parties at the hearing, the hearing panel also heard from the witnesses in the investigation report—Marcy and Noah. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided.

The Panel also heard from two new witnesses, including the following:

- Dr. Eileen Einerson, a professor in the Marketing Department, states that it is common for professors in the department to communicate with their students via text and to engage with students on social media. She explains that since social media is such a significant marketing tool, professors need to train and observe students on it.
- Isaac Isaacson stated that he served as Dr. Graham’s TA during the fall 2020 semester. When asked by Dr. Graham’s advisor about his relationship with Dr. Graham, Isaac stated, “Normal professor-TA relationship. We would connect via Zoom at least once a week and he would assign me work to do for class preparation, grading, or research.” When asked by Dr. Graham’s advisor whether they ever communicated via text, Isaac stated, yeah, we would text each other with quick questions, stuff like that.” When asked by the Hearing Officer if he and Dr. Graham ever met in person outside of school, Isaac stated, “No, that was in the middle of COVID, so there were no in-person meetings at all.” When asked by the Hearing Officer whether Dr. Graham communicated with him via social media, Isaac stated, “I don’t think so. Not that I can remember.” When asked by the Hearing Officer if he had ever received a gift from Dr. Graham, Isaac stated, “Not that I can remember. If he did, it wasn’t anything that stands out to me.”

## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 9

#### Excerpts from Adjudicator Outline

##### *\*Review Policy definitions in handout #4\**

For each element, indicate whether there is sufficient evidence (“SE”) or insufficient evidence (“IE”) to determine that it is more likely than not that the element is met. If a question is not applicable, indicate so (“N/A”)

#### Chloe’s Allegation of Title IX Sexual Harassment—Hostile Environment Harassment and Non-Title IX Sexual Harassment—Hostile Environment Harassment

Chloe alleged that Dr. Graham engaged in unwelcome conduct on the basis of sex in the form of:

- sending Chloe a message saying “maybe you’ll have to come around more often” on February 4, 2025;
- asking Chloe about her weekend plans every week;
- suggesting to Chloe that they go to a new restaurant/bar together in early February;
- asking Chloe about her weekend plans, making a comment about Chloe not having a Valentine’s date, and commenting about his wife by saying, “Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again,” during their conversation on February 14, 2025;
- sending Chloe a message on February 15, 2025, commenting about a “hot girl walk” and suggesting he join her on a walk;
- inviting Chloe to get coffee in a text message exchange on February 24, 2025;
- discussing with Chloe that he was separating from his wife while they were getting coffee on February 25, 2025;
- touching Chloe’s hand and saying “it means a lot that I can be real with you” while they were getting coffee on February 25, 2025;
- commenting about Chloe’s hair and clothes;
- responding to Chloe’s post on Snapchat, stating “looks like you’re having a good time on spring break” and something about it looking hot there, along with a picture of his dog with the statement “miss you” with a heart emoji;
- making comments about Chloe looking tan and about moving out of his house with his wife, and saying to Chloe, “it’s good to have you back” on March 18;
- giving Chloe her favorite candy, white chocolate Reese’s peanut butter cups, on March 18;

- using Chloe as an example for a class demonstration on a self-marketing March 18 and describing Chloe as a “bright, fit, young woman”;
- sending Chloe Snapchat messages on April 1 saying he cared about her, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, and saying she can owe him one with a winking face emoji;
- sending Chloe a Snapchat message on April 1 inviting her out to dinner;
- helping Chloe obtain an internship;
- liking and commenting on Chloe’s Instagram post from April 11, 2025;
- inviting Chloe to attend an out-of-town conference with him via Snapchat on April 17, 2025;
- sending a Snapchat message saying, “I’ll be lonely on the long drive without you” on April 17, 2025;
- hugging Chloe and rubbing her back while in his office on April 25, 2025;
- giving Chloe a journal and saying “A parting gift to remember me by while you are in Florida this summer” on April 25, 2025; and
- giving Chloe a photo of himself with Duke with a note that said he would be thinking about her.
- What conduct occurred:
  - Did Dr. Graham send Chloe a message saying “maybe you’ll have to come around more often” on February 4, 2025?.....SE IE
  - Did Dr. Graham ask Chloe about her weekend plans every week? .....SE IE
  - Did Dr. Graham suggest to Chloe that they go to a new restaurant/bar together in early February? .....SE IE
  - Did Dr. Graham ask Chloe about her weekend plans, make comments about Chloe not having a Valentine’s date, and comment about his wife by saying, “Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again,” during their February 14, 2025 conversation? .....SE IE
  - Did Dr. Graham send Chloe a message on February 15, 2025, making a comment about a “hot girl walk” and suggesting he join her on a walk? .....SE IE
  - Did Dr. Graham invite Chloe to get coffee in a text message exchange on February 24, 2025? .....SE IE
  - Did Dr. Graham discuss with Chloe that he was separating from his wife while they were getting coffee on February 25, 2025?.....SE IE

|                                                                                                                                                                                                                                                          |    |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|
| ○ Did Dr. Graham touch Chloe’s hand and say, “It means a lot that I can be real with you” while they were getting coffee on February 25, 2025? .....                                                                                                     | SE | IE |
| ○ Did Dr. Graham make comments about Chloe’s hair and clothes? .....                                                                                                                                                                                     | SE | IE |
| ○ Did Dr. Graham respond to Chloe’s post on Snapchat stating, “looks like you’re having a good time on spring break” and something about it looking hot there, along with a picture of his dog with the statement “miss you” with a heart emoji?.....    | SE | IE |
| ○ Did Dr. Graham make comments about Chloe looking tan and about moving out of his house with his wife, and say to Chloe, “it’s good to have you back,” on March 18? .....                                                                               | SE | IE |
| ○ Did Dr. Graham give Chloe her favorite candy, white chocolate Reese’s peanut butter cups, on March 18?.....                                                                                                                                            | SE | IE |
| ○ Did Dr. Graham use Chloe as an example for a class demonstration on self-marketing on March 18, 2025 and describe Chloe as a “bright, fit, young woman”? .....                                                                                         | SE | IE |
| ○ Did Dr. Graham send Chloe Snapchat messages on April 1 saying he cared about her, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, and saying she can owe him one with a winking face emoji? ..... | SE | IE |
| ○ Did Dr. Graham send Chloe a Snapchat message on April 1 inviting her to dinner? .....                                                                                                                                                                  | SE | IE |
| ○ Did Dr. Graham help Chloe obtain an internship? .....                                                                                                                                                                                                  | SE | IE |
| ○ Did Dr. Graham like and comment on Chloe’s Instagram post from April 11, 2025? .....                                                                                                                                                                   | SE | IE |
| ○ Did Dr. Graham invite Chloe to attend an out-of-town conference with him via Snapchat on April 17, 2025? .....                                                                                                                                         | SE | IE |
| ○ Did Dr. Graham send a Snapchat message saying, “I’ll be lonely on the long drive without you” on April 17? .....                                                                                                                                       | SE | IE |
| ○ Did Dr. Graham hug Chloe and rub her back while in his office on April 25, 2025? .....                                                                                                                                                                 | SE | IE |
| ○ Did Dr. Graham give Chloe a journal and say, “A parting gift to remember me by while you are in Florida this summer” on April 25, 2025? .....                                                                                                          | SE | IE |
| ○ Did Dr. Graham give Chloe a photo of himself with Duke with a note that said he would be thinking about her?.....                                                                                                                                      | SE | IE |

- Was the conduct you found to have occurred on the basis of sex?
  - Dr. Graham sending Chloe a message saying “maybe you’ll have to come around more often” on February 4, 2025? .....SE IE N/A
  - Dr. Graham asking Chloe about her weekend plans every week? .....SE IE N/A
  - Dr. Graham suggesting to Chloe that they go to a new restaurant/bar together in early February? .....SE IE N/A
  - Dr. Graham asking Chloe about her weekend plans, making comments about Chloe not having a Valentine’s date, and commenting about his wife by saying, “Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again,” during their February 14, 2025 conversation? .....SE IE N/A
  - Dr. Graham sending Chloe a message on February 15, 2025, making a comment about a “hot girl walk” and suggesting he join her on a walk? .....SE IE N/A
  - Dr. Graham inviting Chloe to get coffee in a text message exchange on February 24, 2025? .....SE IE N/A
  - Dr. Graham discussing with Chloe that he was separating from his wife while they were getting coffee on February 25, 2025? .....SE IE N/A
  - Dr. Graham touching Chloe’s hand and saying, “It means a lot that I can be real with you” while they were getting coffee on February 25, 2025?.....SE IE N/A
  - Dr. Graham making comments about Chloe’s hair and clothes? .....SE IE N/A
  - Dr. Graham responding to Chloe’s post on Snapchat, stating “looks like you’re having a good time on spring break” and something about it looking hot there, along with a picture of his dog with the statement “miss you” with a heart emoji?.....SE IE N/A
  - Dr. Graham making comments about Chloe looking tan and about moving out of his house with his wife, and saying “it’s good to have you back” on March 18? .....SE IE N/A
  - Dr. Graham giving Chloe her favorite candy, white chocolate Reese’s peanut butter cups, on March 18? .....SE IE N/A
  - Dr. Graham using Chloe as an example for a class demonstration on self-marketing on March 18, 2025 and describing Chloe as a “bright, fit, young woman”? .....SE IE N/A
  - Dr. Graham sending Chloe Snapchat messages on April 1 saying he cared about her, calling her his star

- |   |                                                                                                                                                 |    |    |     |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------|----|----|-----|
|   | TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, and saying she can owe him one with a winking face emoji? ..... | SE | IE | N/A |
| ○ | Dr. Graham sending Chloe a Snapchat message on April 1 inviting her to dinner? .....                                                            | SE | IE | N/A |
| ○ | Dr. Graham helping Chloe obtain an internship? .....                                                                                            | SE | IE | N/A |
| ○ | Dr. Graham liking and commenting on Chloe's Instagram post from April 11, 2025? .....                                                           | SE | IE | N/A |
| ○ | Dr. Graham inviting Chloe to attend an out-of-town conference with him via Snapchat on April 17, 2025? .....                                    | SE | IE | N/A |
| ○ | Dr. Graham sending a Snapchat message saying, "I'll be lonely on the long drive without you" on April 17? .....                                 | SE | IE | N/A |
| ○ | Dr. Graham hugging Chloe and rubbing her back while in his office on April 25, 2025? .....                                                      | SE | IE | N/A |
| ○ | Dr. Graham giving Chloe a journal and saying "A parting gift to remember me by while you are in Florida this summer" on April 25, 2025? .....   | SE | IE | N/A |
| ○ | Dr. Graham giving Chloe a photo of himself with Duke with a note that said he would be thinking about her? .....                                | SE | IE | N/A |
- For conduct that was on the basis of sex, was the conduct unwelcome?
- |   |                                                                                                                                                                                                                                                                                                                                  |    |    |     |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|-----|
| ○ | Dr. Graham sending Chloe a message saying "maybe you'll have to come around more often" on February 4, 2025? .....                                                                                                                                                                                                               | SE | IE | N/A |
| ○ | Dr. Graham asking Chloe about her weekend plans every week? .....                                                                                                                                                                                                                                                                | SE | IE | N/A |
| ○ | Dr. Graham suggesting to Chloe that they go to a new restaurant/bar together in early February? .....                                                                                                                                                                                                                            | SE | IE | N/A |
| ○ | Dr. Graham asking Chloe about her weekend plans, making comments about Chloe not having a Valentine's date, and commenting about his wife by saying, "Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again," during their February 14, 2025 conversation? ..... | SE | IE | N/A |
| ○ | Dr. Graham sending Chloe a message on February 15, 2025, making a comment about a "hot girl walk" and suggesting he join her on a walk? .....                                                                                                                                                                                    | SE | IE | N/A |
| ○ | Dr. Graham inviting Chloe to get coffee in a text message exchange on February 24, 2025? .....                                                                                                                                                                                                                                   | SE | IE | N/A |

|                                                                                                                                                                                                                                                         |    |    |     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|-----|
| ○ Dr. Graham discussing with Chloe that he was separating from his wife while they were getting coffee on February 25, 2025? .....                                                                                                                      | SE | IE | N/A |
| ○ Dr. Graham touching Chloe's hand and saying, "It means a lot that I can be real with you" while they were getting coffee on February 25, 2025?.....                                                                                                   | SE | IE | N/A |
| ○ Dr. Graham making comments about Chloe's hair and clothes? .....                                                                                                                                                                                      | SE | IE | N/A |
| ○ Dr. Graham responding to Chloe's post on Snapchat, stating "looks like you're having a good time on spring break" and something about it looking hot there, along with a picture of his dog with the statement "miss you" with a heart emoji?.....    | SE | IE | N/A |
| ○ Dr. Graham making comments about Chloe looking tan and about moving out of his house with his wife, and saying "it's good to have you back" on March 18? .....                                                                                        | SE | IE | N/A |
| ○ Dr. Graham giving Chloe her favorite candy, white chocolate Reese's peanut butter cups, on March 18? .....                                                                                                                                            | SE | IE | N/A |
| ○ Dr. Graham using Chloe as an example for a class demonstration on self-marketing on March 18, 2025 and describing Chloe as a "bright, fit, young woman"? .....                                                                                        | SE | IE | N/A |
| ○ Dr. Graham sending Chloe Snapchat messages on April 1 saying he cared about her, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, and saying she can owe him one with a winking face emoji? ..... | SE | IE | N/A |
| ○ Dr. Graham sending Chloe a Snapchat message on April 1 inviting her to dinner? .....                                                                                                                                                                  | SE | IE | N/A |
| ○ Dr. Graham helping Chloe obtain an internship? .....                                                                                                                                                                                                  | SE | IE | N/A |
| ○ Dr. Graham liking and commenting on Chloe's Instagram post from April 11, 2025? .....                                                                                                                                                                 | SE | IE | N/A |
| ○ Dr. Graham inviting Chloe to attend an out-of-town conference with him via Snapchat on April 17, 2025? .....                                                                                                                                          | SE | IE | N/A |
| ○ Dr. Graham sending a Snapchat message saying, "I'll be lonely on the long drive without you" on April 17? .....                                                                                                                                       | SE | IE | N/A |
| ○ Dr. Graham hugging Chloe and rubbing her back while in his office on April 25, 2025? .....                                                                                                                                                            | SE | IE | N/A |
| ○ Dr. Graham giving Chloe a journal and saying "A parting gift to remember me by while you are in Florida this summer" on April 25, 2025?.....                                                                                                          | SE | IE | N/A |
| ○ Dr. Graham giving Chloe a photo of himself with Duke with a note that said he would be thinking about her? .....                                                                                                                                      | SE | IE | N/A |

- For conduct that you find to be on the basis of sex and unwelcome, was the conduct so severe, pervasive, and objectively offensive that it effectively denied Chloe equal access to the University's education program or activity .....SE      IE      N/A
  - In making this determination, consider the collective impact of the conduct that you found to be on the basis of sex and unwelcome.

**If you find *insufficient evidence* that the conduct was so severe, pervasive, and objectively offensive that it effectively denied Chloe equal access to the University's education program or activity:**

- For conduct that you find to be on the basis of sex and unwelcome, would a reasonable person determine the conduct to be so severe or pervasive that it substantially and unreasonably interfered with Chloe's employment or education, or created an intimidating, hostile, or offensive employment or educational environment? .....SE      IE      N/A

Do you find Dr. Graham responsible for Title IX Hostile Environment Harassment? ..... Yes      No

Do you find Dr. Graham responsible for Non-Title IX Hostile Environment Harassment? ..... Yes      No

**Rationale for finding:**

**Sanctions for Dr. Graham (if applicable):**

**Rationale for sanctions:**

## 2025 Conducting a Live Hearing Under Title IX/VAWA Training

### Handout 10

#### **Notice of Determination Excerpt:**

Based on the evidence in the adjudication file, the evidence presented at the live hearing, and the Policy provisions regarding Title IX Hostile Environment Harassment and Non-Title IX Hostile Environment Harassment, the Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham engaged in Title IX Hostile Environment Harassment but finds sufficient evidence to determine it is more likely than not that Dr. Graham engaged in Non-Title IX Hostile Environment Harassment, as discussed below.

#### **Analysis of Chloe's Title IX Hostile Environment Harassment and Non-Title IX Hostile Environment Harassment Allegations**

The formal complaint alleged that Dr. George Graham engaged in Title IX Hostile Environment Harassment or Non-Title IX Hostile Environment Harassment. The Panel first determines what conduct occurred.

#### **What Conduct Occurred**

##### *Text Message Comment for Chloe to "Come Around More Often" in Early February 2025*

Chloe alleged that in early February 2025, while Dr. Graham was out of town and Chloe was dog-sitting for Dr. Graham, Dr. Graham sent her a text message that she should "come around more often."

Chloe stated that in February 2025, Dr. Graham began to ask more personal questions. Chloe stated, "At first, I didn't mind all the personal questions. It was casual, like once he asked if I liked dogs and he told me about his golden retriever, Duke. Also, in that conversation I told him about my pets growing up and stuff like that." Chloe stated, "Shortly after we had that conversation, he asked if I could go to his house while he was gone for a conference for a couple days. I think it was like just Tuesday to Wednesday" to let his dog, Duke, out "each morning and night." Chloe stated that she said yes and that she went to Dr. Graham's house once Tuesday night and once Wednesday morning. Chloe stated that while she was at Dr. Graham's house, "I just texted him a picture of Duke and a message letting Dr. Graham know that I was taking Duke for a walk and he was all taken care of. It wasn't a big deal at all." When asked how Dr. Graham responded to these texts, Chloe stated, "He said something like, 'He looks happy. You'll have to come again sometime.'" Chloe provided a screenshot of a text exchange from February 4, 2025 at 8:34 p.m. in which Dr. Graham texted, "Thanks, Chloe! He looks happy, maybe you'll have to

come around more often.” In the text exchange, Chloe responded, “Haha, I love any time I can get with a golden retriever.” When asked if she was okay with going to Dr. Graham’s house when he was not there to let Duke out, Chloe stated, “I was fine with it at first. I mean, I love dogs. But that message kinda weirded me out like he was inviting me to come hang out at his house with him.”

When asked if he shared about his personal life with Chloe, Dr. Graham stated, “We got close over time. I talked to her about my dog, Duke, my family a little bit, stuff like that.” When asked what he would say about his dog, Dr. Graham stated, “Nothing specific comes to mind. She shared how she loved dogs and how she had a golden retriever when she was a kid. I asked her once to let Duke out when I was out of town for a day for a conference speaking event. I think that was in early February.” When asked if he communicated with Chloe while he was out of town, Dr. Graham stated, “Yes, each time she went over to the house, she would text me a picture of Duke and let me know how he was doing.” When asked how he responded to those messages, Dr. Graham stated, “I probably just said, ‘thanks’ or would like the message.” When provided an opportunity to respond to the screenshot of the text exchange provided by Chloe in which Dr. Graham responded to a photo of Duke by saying, “He looks happy, maybe you’ll have to come around more often,” Dr. Graham stated, “I don’t remember saying that, but I know I didn’t mean anything inappropriate by it.”

Therefore, while Dr. Graham did not remember sending the “maybe you’ll have to come around more often” message, he stated that he “didn’t mean anything inappropriate by it,” and Chloe submitted a screenshot of the text message exchange. As such, the Panel finds sufficient evidence to determine that it is more likely than not that, on February 4, 2025, Dr. Graham sent Chloe a text message saying, “maybe you’ll have to come around more often.”

### *Conversations about Weekend Plans*

Chloe alleged that Dr. Graham asked her about her weekend plans every week.

Chloe stated, “[B]y later on it got to the point where every week he was asking about my weekend plans. It made me a bit uncomfortable since obviously I don’t need to be telling my professor every time I’m getting drinks or going out with friends.”

When asked if he ever talked to Chloe about her personal life, Dr. Graham stated, “yes,” and “I don’t remember the specifics of every conversation. I know we talked about her job search a lot, she was stressed about it.” At the hearing, when given the opportunity to respond to Chloe’s account that he eventually was asking Chloe about her weekend plans every week, Dr. Graham stated, “I don’t think that’s accurate. I remember asking the weekend of Valentines, and I remember her telling me that she was getting drinks with friends one Friday, but other than that, I don’t recall asking her about her weekend plans. It certainly wasn’t every week.”

Considering the parties' conflicting accounts and the lack of any evidence outside the parties' accounts, the Panel finds insufficient evidence to determine that it is more likely than that Dr. Graham asked Chloe about her weekend plans every week.

*Comments to Go to a New Restaurant/Bar Together in Early February*

Chloe alleged that Dr. Graham suggested to her that they go to a new restaurant/bar together in early February.

Chloe stated that during a Friday phone conversation she mentioned she was going to Peggy's for "Friday after Class" and that she was interested in trying a new place that "also supposedly had a good happy hour." Chloe stated, "Then he was like, 'Oh yeah, I heard about that place opening. Maybe we could go together and check it out sometime.'" When asked how she responded, Chloe stated, "I thought he was kind of joking. It was weird, but I just laughed it off."

When provided an opportunity to respond to Chloe's account about Dr. Graham suggesting they go to the new restaurant/bar, Dr. Graham stated, "Yeah, that sounds familiar, I think she mentioned that she was getting drinks with her friends and I said something that we could grab drinks sometime after our Marketing 101 course. I did this with some of my former TAs and they seemed to appreciate having a professor they could connect with." When asked how Chloe responded to his suggestion, Dr. Graham stated, "She maybe said, 'yeah that would be fun sometime,' or something like that but we didn't end up ever getting drinks together."

Considering that Dr. Graham agrees that he suggested to Chloe that they could get drinks together, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham suggested that they go to a new restaurant/bar together in early February.

*Comments about Chloe Not Having a Valentine's Day Date and Dr. Graham's Wife on February 14*

Chloe alleged that Dr. Graham made comments about her not having a Valentine's date and about his wife on February 14, 2025.

Chloe stated that on the morning of Friday, February 14, Dr. Graham called her. Chloe stated that Friday was when "Dr. Graham usually would call" and they would "talk through how my week went and my work for next week." Chloe stated that in their conversation on February 14, Dr. Graham asked her what she was doing that weekend. Chloe stated, "I said, 'not much,' and then he kind of laughed and was like, 'Oh sure, I bet that's not true. I find it hard to believe someone like you doesn't have a date' or something like that." Chloe stated that Dr. Graham "kept going, saying something about his wife, I don't remember exactly what it was but something like, 'Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again.'" When asked who Brittany was, Chloe stated, "His

wife. I knew he was married, like it might have been in his bio or something, but he had never talked to me about his wife before like that.” When asked how she responded to Dr. Graham’s statement, Chloe stated, “I kind of just half-laughed and was like, ‘Well golden retrievers do make good company so that doesn’t sound too bad.’ I was trying to make it less weird.” When asked what happened next, Chloe stated, “I think I just changed the topic to the upcoming midterms exams or something like that.”

When asked if there was a day of the week he would typically do a check-in call with Chloe, Dr. Graham stated that it was usually Friday morning. When asked if he could recall any specific Friday morning conversation, Dr. Graham stated, “not really.” When asked in a follow-up interview if he spoke with Chloe on Friday, February 14, Dr. Graham stated, “Probably, I typically checked in with her on Fridays.” When asked to describe the conversation on February 14, Dr. Graham stated, “I don’t recall the specifics. Maybe I asked her what she was doing that weekend, see if she had any special plans.” When asked if he ever spoke to Chloe about his wife, Dr. Graham stated, “I maybe mentioned her at times, but I don’t recall discussing Brittany extensively with Chloe.” When provided an opportunity to respond to the portion of Chloe’s account regarding their February 14 conversation, Dr. Graham stated, “I did not say, ‘I find it hard to believe someone like you doesn’t have a date,’ but maybe I said that thing about Brittany and basketball, it sounds like something I would say.”

Therefore, the parties’ accounts differ as to whether Dr. Graham made a comment about Chloe not having a date for Valentine’s Day. As a result, the Panel considers whether there is evidence outside the parties’ accounts to tip the scales between the two competing accounts and overcome the presumption that Dr. Graham is not responsible.

Marcy stated that during a conversation with Chloe while on their March spring break trip, Chloe shared that “weird stuff” was “normal” for Dr. Graham. Marcy stated, “Like how he made some comment to her about not having a date for Valentine’s.”

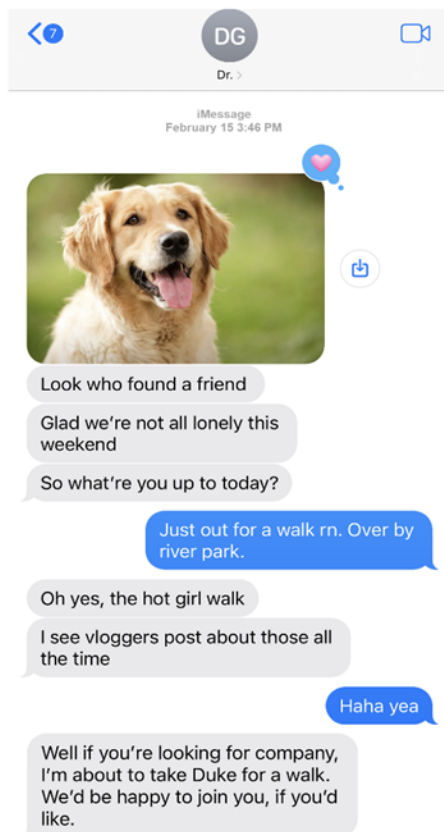
Therefore, Marcy’s account of Chloe’s conversation with her corroborates Chloe’s account that Dr. Graham made some comment about Chloe not having a date for Valentine’s Day. However, because Marcy’s account does not include additional details as to the specific comment Dr. Graham made, the Panel does not find Marcy’s account sufficient to tip the scales regarding whether Dr. Graham made the comment, “Oh sure, I bet that’s not true. I find it hard to believe someone like you doesn’t have a date.”

Therefore, considering Dr. Graham’s account that he may have asked Chloe about her weekend plans and that he said “that thing” about his wife and basketball that Chloe stated in her account related to their February 14 conversation, and considering Marcy’s account corroborating Chloe’s allegation that Dr. Graham made a comment about her not having a Valentine’s date, the Panel finds sufficient evidence to determine that it is more likely than not that during their February 14 conversation, Dr. Graham asked Chloe about her weekend plans, made a comment

about her not having a Valentine's date, and commented to Chloe, "Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again." The Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham said, "Oh sure, I bet that's not true. I find it hard to believe someone like you doesn't have a date."

*Text Comments about a "Hot Girl Walk" and Dr. Graham Walking with Chloe on February 15*

Chloe alleged that in a text message exchange on Saturday, February 15, 2025, Dr. Graham made a comment about Chloe taking a "hot girl walk" and suggested they go on a walk together. Chloe stated that Dr. Graham texted her on Saturday, February 15 and that "he had never texted or called me on the weekend before." Chloe stated, "[H]e sent me a picture of his dog and was like, 'Look who found a friend,' that's how it started." Chloe provided the following screenshot of the text message exchange from February 15, 2025 at 3:46 p.m.



When asked if the conversation continued after the last shown text in the screenshot, Chloe stated, "I didn't respond to that last message. I don't know, it was just kind of weird, and I certainly didn't actually want to go on a walk with him but I didn't want to make it awkward. It's

not like I could just stop working with him and a reference letter down the road would be nice. So I just didn't respond. I told him that next week that I must've missed his text."

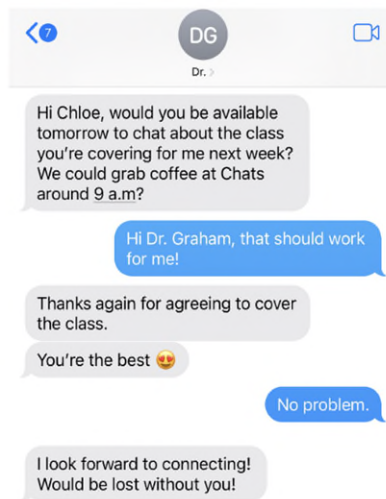
When asked if he ever talked to Chloe on the weekend, Dr. Graham stated, "Not regularly, maybe like a picture of my dog or something." When asked in a follow-up interview if he ever asked Chloe to hang out with him outside of school, Dr. Graham stated, "She loved my dog, Duke, and I think once I suggested we take Duke for a walk or something. She didn't end up coming though." When provided an opportunity to respond to the portion of Chloe's account regarding their text conversation on February 15, Dr. Graham stated, "I guess I did send those messages, but she's taking it way out of context. She had told me months ago that she was kind of an influencer on TikTok for videos about her day. I was just trying to encourage her self-marketing, which is really important in the industry. Also, I, in no way, intended it to be 'weird.'"

Therefore, the parties agree that the text message exchange occurred, including that Dr. Graham made the "hot girl walk" comment and suggested that he and Chloe go on a walk. Furthermore, Chloe submitted the screenshot of the exchange. Consequently, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham made text comments about a "hot girl walk" and suggested he join Chloe on a walk on February 15, 2025.

#### *Invitation to Get Coffee Off-Campus on February 24*

Chloe alleged that in a text conversation, Dr. Graham invited her to get coffee at an off-campus coffee shop called Chats.

Chloe stated, "I feel like stuff just progressed after that Valentine's Day weekend, like he just kept talking to me more, commenting on my hair or clothes, or like inviting me to do stuff outside of school. It was like he would try to make it about school but that was just a cover for spending time with me. I didn't see it at first but over time it just got weird." When asked what he would invite her to outside of school beyond the previously mentioned restaurant/bar and dog walk, Chloe stated, "There was one time, maybe sometime toward the end of February, he messages about asking to get coffee to discuss the upcoming class that I would be covering for him. The Valentine's Day thing was still kind of stuck in my head, but I agreed to go because it was about school, and I did have a few questions about the class I was covering." Chloe provided the following screenshot of the text message exchange from February 24, 2025 at 5:46 p.m.



When asked at the hearing by the Hearing Officer how she felt about the above text message exchange, Chloe stated, “I don’t think I thought much of it at first, but then when I went back and read this after we got coffee and the things that happened there, I feel like that heart-eyes emoji and the comment about being lost without me were really inappropriate.”

When asked about spending time with Chloe outside of school, Dr. Graham stated, “One time we got coffee. Chloe was about to cover a class for me, and I suggested we get coffee at this coffee shop off-campus called Chats to discuss the class. She didn’t seem to have any issues with meeting up outside of school. Again, it wasn’t like I hadn’t met with other TAs to get coffee before.” When asked how the idea of getting coffee came up, Dr. Graham stated, “I texted her and she said yes.” When given an opportunity at the hearing by the Hearing Officer to respond to Chloe’s statement at the hearing that she felt like the heart-eyes emoji and the comment about being lost without Chloe in the text message exchange were “really inappropriate,” Dr. Graham stated, “I didn’t mean anything by the emoji. Both that comment about her being the best and me being lost without her were about her work as my TA. She was covering for my class. That’s all it was about.”

Considering the parties’ agreement that Dr. Graham invited Chloe to get coffee and the screenshot of the text message exchange, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham invited Chloe to get coffee in a text message exchange on February 24, 2025.

#### *Comments about Dr. Graham Separating from his Wife on February 25*

Chloe alleged that during their conversation at the coffee shop on February 25, 2025, Dr. Graham made comments about his wife.

When asked to describe what happened the next day when they got coffee, Chloe stated, “I mean it was kind of just normal. We talked about preparing for the class, he bought me coffee. I mean it’s not like it was the first time we were together alone since I was TA. He did mention something about him and his wife thinking about separating, that was weird. I kind of forgot about that, but now that I’m looking back, that was definitely out of place. Like he was talking about being out of town for his conference, but his wife wouldn’t be traveling with him this time and started getting into it.” When asked what she meant by “getting into it,” Chloe stated, “He just said that they have been growing distant, something about living separate lives and that they are probably going to do a trial separation.” When asked what her response was, Chloe stated, “I think I just kind of nodded. I really didn’t know what to say. But then he switched topics, just said, ‘Oh well, life keeps moving on,’ or something like that.”

When asked to describe their conversation at the coffee shop, Dr. Graham stated, “We just talked about the class she was covering, the conference I was speaking at, stuff like that.” When asked if they talked about either of their personal lives during their conversation at the coffee shop, Dr. Graham stated, “I mentioned that my wife wouldn’t be attending the conference with me. I mentioned that because previously Brittany had traveled with me and that’s when Chloe had to let my dog out, but she wouldn’t need to do that since Brittany was staying back at the house.” When asked how Chloe responded to him talking about his wife, Dr. Graham stated, “She didn’t really respond any specific type of way. Like it was just mentioned in passing, it was not a full-blown conversation.” When provided an opportunity to respond to Chloe’s account that Dr. Graham told her that his wife would not be going to the conference with him and that they were going to do a trial separation, Dr. Graham stated, “I was just explaining why Brittany wasn’t going with me.”

Considering that the parties agree that Dr. Graham discussed separating with his wife during his conversation with Chloe at the coffee shop, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham discussed separating from his wife while getting coffee with Chloe on February 25, 2025.

#### *Dr. Graham Touching Chloe’s Hand and Comments about how much she means to him on February 25*

Chloe alleged that Dr. Graham touched her hand during their conversation at the coffee shop and said, “It means a lot that I can be real with you.”

Chloe stated, “Oh my gosh, I just remembered, at that point he kind of grabbed my hand. Yeah I totally forgot about that.” When asked to further describe Dr. Graham grabbing her hand, Chloe stated, “So, before he changed topics [from his wife], I said something like, ‘I’m sorry, that must be really hard.’ Then I guess, he didn’t really grab my hand, but he rested his hand on mine and said something like, ‘Thanks. It means a lot that I can be real with you.’” When asked how long

Dr. Graham rested his hand on top of hers, Chloe stated, “It was there for like less than five seconds because I moved my hand away.” When asked how she felt about Dr. Graham placing his hand on hers, Chloe stated, “It was so awkward, especially him talking about his problems with his wife. I brushed it off at the time, but now looking back, I should’ve realized early on he was weird.”

When asked in a follow-up interview, if he and Chloe touched during the conversation at the coffee shop, Dr. Graham stated, “Touched? No, I don’t think so. I don’t recall hugging or anything like that.” When provided an opportunity to respond to Chloe’s account that Dr. Graham placed his hand on top of hers and said “It means a lot that I can be real with you,” Dr. Graham stated, “I don’t specifically remember that, but I do express myself with my hands, so I could see myself briefly touching her hand to emphasize my point, but it certainly wouldn’t have been anything sexual and I don’t think there’s anything wrong with saying that it is nice to be able to be real with someone.”

Therefore, Dr. Graham did not dispute Chloe’s account and instead stated that he could see himself briefly touching Chloe’s hand and that he didn’t think there was anything wrong with saying that it is nice to be able to be real with someone. As such, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham touched Chloe’s hand and said, “It means a lot that I can be real with you,” while they were getting coffee on February 25, 2025.

### *Comments about Hair and Clothes in March*

Chloe alleged that Dr. Graham made comments about her hair and clothes.

Chloe stated, “He just kept talking to me more, commenting on my hair or clothes.” When asked to further describe Dr. Graham’s comments about her hair or clothes, Chloe stated, “Yeah, like I started kind of noticing it in March. It was always when I would do something out of my normal. Like one day I curled my hair, which I don’t normally do, and when he saw me, he was like, ‘New hairstyle is looking good’ or something cringy like that.” When asked how the comment made her feel, Chloe stated, “I don’t know, I guess, like I said, cringy. Just kind of awkward. But again I didn’t want to make a big deal about it.” When asked if there were other comments Dr. Graham made about her appearance, Chloe stated, “Well, it wasn’t like every time I saw him, it would just kind of happen throughout, like the whole semester. But there was another time shortly after that hair thing, maybe it was our last class before spring break. I had a big presentation in one my other classes earlier that day so I had dressed up, like in a dress, which again is not my normal, and when I walked into Dr. Graham’s class, he was like, ‘Looking sharp, Chloe.’” When asked how that comment made her feel, Chloe stated, “Similar to the hair. Like in the moment I thought it was weird but didn’t feel like it was a big enough deal to say anything to him. But now, like in combination with everything else, it does make me uncomfortable that he was paying attention enough to notice when something was different.”

When asked if he would ever comment about Chloe's appearance, Dr. Graham stated, "Nothing specifically comes to mind." When asked in a follow-up interview if he ever commented about Chloe's hair, Dr. Graham stated, "Maybe when she got it cut or styled it differently. Like she almost always wore it up in a ponytail, so if she did something different I maybe would say like, 'Nice hair.'" When asked if he ever commented about Chloe's clothing, Dr. Graham stated, "Again, maybe if there was something different. Like I think once she must have had a presentation for one of her own classes and she dressed up, like in professional attire." When asked if he knew when that comment was, Dr. Graham stated, "I don't know for sure, sorry." Dr. Graham stated, "And I would just like to add, it wasn't like I said stuff to Chloe regularly, like once or twice, and it wasn't like I was trying to single her out. I would comment on other students' hair or outfits or style or whatever if they switched up." Dr. Graham stated, "I'm a marketing professor. I want students to be mindful of how they present themselves. So if they look professional and put-together, I'm going to point it out."

Considering Dr. Graham's account that it was possible that he commented about Chloe's hair and clothes, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham commented about Chloe's hair and clothes.

#### *Snapchat Comments to Chloe During Spring Break*

Chloe alleged that Dr. Graham responded to a post on her Snapchat story that had a picture of her in a bikini by saying, "Looks like you're having a good time on spring break" and something about it being hot there and then sent a picture of his dog and said "miss you" with a heart emoji.

Chloe stated, "[W]hile I was in Mexico, I posted a Snapchat story with a picture of me in a bikini." Chloe stated, "It wasn't until later that night that I remembered that I had added Dr. Graham on Snapchat because I got a Snapchat notification saying George responded to my story," and "I immediately show the notification to my friend, Marcy." Chloe stated, "So then I opened his Snap and it said like 'looks like you're having a good time on spring break' and then he said something about it looking hot there. Then he sent a picture of his dog and it said something like 'miss you' with a heart emoji. And Marcy was like, 'Oh my gosh, Chloe, you cannot TA for him again, he is being so weird.'" When asked if both the "looks like you're having a good time" message and the dog message were photo messages, Chloe stated, "No, the first message was just text and the second one was a picture with the 'miss you' comment." When asked how she responded to Marcy's comment that Dr. Graham was being weird, Chloe stated, "I told her a little bit about some of the other stuff, but mostly I was just trying to downplay the situation and rationalize everything, because I was still going to go back and finish out the semester TA-ing for him. I needed his help getting an internship. So I think in the moment I said something like, 'I think maybe Dr. Graham is talking about how the dog misses me.' Although, honestly, it's still weird because I only saw his dog two times when Dr. Graham was out of town and I walked Duke." When asked what she was doing at the point of seeing the

notification and showing it to Marcy, Chloe stated, “We were at the AirBnb getting ready to go out that night.” When asked at what point Dr. Graham responded to her Snapchat story with the photo of Duke, Chloe stated, “Probably around 10 p.m.” When asked if she responded to Dr. Graham’s Snapchat, Chloe stated, “No, I just ignored it.”

When asked if he ever responded to a Snapchat story that Chloe posted, Dr. Graham stated, “I think I may have once when she posted about spring break.” When asked how he responded, Dr. Graham stated, “I just sent a picture of my dog and said something about Duke missing her.” When provided an opportunity to respond to the portion of Chloe’s account that he responded to her Snapchat story with a snap that said, “looks like you’re having a good time on spring break” and commented about it looking hot there, Dr. Graham responded, I don’t specifically recall saying that, but I do remember sending her a message.” When provided an opportunity to respond to the portion of Chloe’s account that he also sent a snap that included a picture of Duke and a message that said “miss you” with a heart emoji, Dr. Graham stated, “I do remember sending that, but I thought I said ‘Duke misses you’ but even still, if I said ‘miss you’ I was referring to Duke since she had previously taken care of him and we had talked about him multiple times.”

Therefore, the parties’ accounts differ as to whether Dr. Graham responded to Chloe’s Snapchat story post by saying “looks like you’re having a good time on spring break” and about it being hot there, and then sent a picture of his dog that said, “miss you.” As a result, the Panel considers whether there is evidence outside the parties’ accounts to tip the scales between the two competing accounts and overcome the presumption that Dr. Graham is not responsible.

Marcy stated, “This one time, while Chloe, me, and some other friends were on spring break in Mexico, Chloe posted a picture of herself in a bikini to her Snapchat story.” Marcy stated, “Later that night, Chloe told me that Dr. Graham had responded to her story. She showed it to me. It was a picture of his dog and it said ‘miss you’ with a heart emoji. And he said something about it looking hot. I honestly was so grossed out by that, but I don’t know, Chloe was TA-ing for him so she just kind of brushed it off.” When asked what time Chloe shared the Snapchat message notification with her, Marcy stated, “We were all getting ready to go out. I’m not sure what time it was, maybe like 10 p.m.”

Considering Marcy’s close-in-time and first-hand witness account of the messages Dr. Graham sent Chloe on Snapchat, the Panel finds sufficient evidence to tip the scales between the parties’ conflicting accounts so as to overcome the presumption of nonresponsibility regarding whether Dr. Graham responded to Chloe Snapchat post saying something about it looking hot there, along with a picture of his dog with the statement “miss you” with a heart emoji. Consequently, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham responded to Chloe Snapchat post saying something about it looking hot there, along with a picture of his dog with the statement “miss you” with a heart emoji. However, because Marcy did not give an account of Dr. Graham’s response saying, “looks like you’re having a good time

on spring break,” the Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham made that comment in his response.

*Comments about Looking Tan, Dr. Graham’s Wife, and It Being Good that Chloe is Back on March 18*

Chloe alleged that on March 18, Dr. Graham made comments that she looked tan, that he and his wife no longer live together, and that it was good to have her back.

When asked when the next time she interacted with Dr. Graham after spring break was, Chloe stated, “It was shortly before class was supposed to start. I went to his office to get the midterm exams and Dr. Graham was like, ‘Hey Chloe, looking tan, must have gotten some good sun in Mexico.’” Chloe stated, “[H]e continued by asking if I had fun. I said ‘yeah, it was fun.’” When asked how the conversation continued, Chloe stated, “I asked him how his spring break was and then he started getting into it. He like said something about moving out of the house with his wife and into his own apartment and he just spent the week sad and sitting around feeling sorry for himself.” Chloe stated, “Then he said something like, ‘it’s good to have you back,’ and brought up that he had gotten me some white chocolate Reese’s peanut butter cups.” When asked how the conversation made her feel, Chloe stated, “At this point, I was uncomfortable, but I didn’t know what to do, like I needed to keep communicating with him to finish out my TA job for the semester and I was worried that if I said something, he might not help me with my summer internship.”

When asked when he first spoke with Chloe after spring break, Dr. Graham stated, “Probably our first class period following spring break, that would have been March 20.” When asked to describe the conversation, Dr. Graham stated, “I don’t remember exactly, I would think just normal stuff like ‘how was your trip?’” When provided an opportunity to respond to the portion of Chloe’s account regarding their first conversation after spring break, Dr. Graham stated, “Yeah I maybe said she was tan, but only because she had that Snapchat story from the beach. I was probably just making a joke about it.” When given an opportunity to respond to Chloe’s account of him talking about moving into his own apartment, Dr. Graham stated, “Yeah, I’m sure that’s true. Honestly, that personal stuff was impacting my mood in other parts of my life, including work. It was a tough time for sure.” Dr. Graham stated, “Also, I don’t think there’s anything wrong with me saying I was glad she was back. A professor can care for the safe travels of their students.”

Considering Dr. Graham’s agreement that it was possible that he commented that Chloe looked tan and discussed moving away from his wife and considering he said he didn’t see anything wrong with saying he was glad she was back, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham commented about Chloe looking tan and moving out of his house with his wife, and said to Chloe, “it’s good to have you back” on March 18, 2025.

### *Gift of Candy on March 18*

Chloe alleged that Dr. Graham gave her a gift of her favorite candy, white chocolate Reese's peanut butter cups, on March 18, 2025.

Chloe stated that during their conversation in Dr. Graham's office on March 18, Dr. Graham brought up that he had gotten Chloe "some white chocolate Reese's peanut butter cups." Chloe stated, "Honestly, that was so out of the blue. Like I didn't ask for them or anything, but what's really creepy is it's my favorite candy, but like the white chocolate ones specifically, which I feel like that being someone's favorite is not normal. I don't know how he even knew that."

When asked in a follow-up interview if he gave Chloe anything during the first conversation they had after spring break, Dr. Graham stated, "I mean I had purchased some of her favorite candy." When asked how he knew what her favorite candy was, Dr. Graham stated, "Oh she had told me at some point. I don't remember when."

When provided an opportunity to respond to Dr. Graham's account on how he knew her favorite candy, Chloe stated, "Oh yeah, like way back when I took his seminar last year, I told him my favorite candy. But like kind of strange that he remembered it like more than a year later."

Considering the parties' agreement that Dr. Graham gave Chloe her favorite candy during their first conversation after spring break, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham gave Chloe a gift of her favorite candy on March 18, 2025.

### *Use of Chloe for Class Demonstration on March 18*

Chloe alleges that Dr. Graham used her for a class demonstration on self-marketing on March 18, 2025.

Chloe stated that after the talk in Dr. Graham's office on March 18, "[W]e went to class and after we finished handing back the midterm exams, Dr. Graham shared with the class that they would start prepping their end-of-semester final projects, focused on self-marketing," and "he would have the class use me as an example and have them comment about me and my appearance and all that." When asked what she meant by "use me as an example," Chloe stated, "Dr. Graham wanted the students to brainstorm what the marketing could look like, and he was like, 'Now class, take Chloe here, she's a bright, fit, young woman, how would you all recommend she market herself to be attractive to marketing agencies, vendors, and the public?' and the students raised their hands and said stuff like focusing on the health and wellness space and partnerships with fitness influencers, stuff like that." When asked if she could recall any of the students' comments specifically, Chloe stated, "There was a student in the front, I believe his name was Noah. Noah was like 'Especially with how fit she is, Chloe could lean into modeling and

highlighting active wear.’ And then Dr. Graham agreed.” When asked how she felt about Dr. Graham using her as a demonstration, Chloe stated, “It was really weird. Like when we did this project when I was a Marketing 101 student, we used some celebrity as the demonstration, not someone standing right there.”

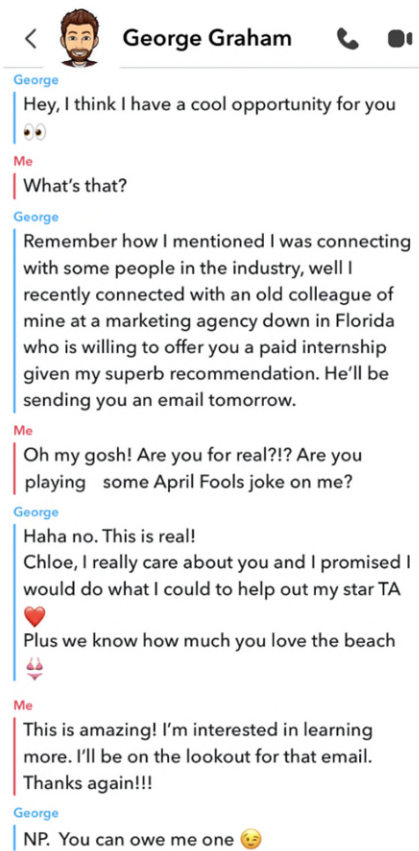
When asked if he ever used Chloe for a class demonstration, Dr. Graham stated, “I’m not exactly sure what you mean by a demonstration,” and “I guess, this is a little bit of a demonstration, but when the class was starting to prepare for their end-of-semester projects on self-marketing, I asked them to brainstorm starting with Chloe.” When asked if he had communicated with Chloe prior to the demonstration, Dr. Graham stated, “No, I figured it would not be a problem since she was already building a TikTok and Instagram following.” When asked what the students said about Chloe as part of the practice exercise, Dr. Graham stated, “They emphasized how fit she is, and how she would work well in health and wellness branding.” When given an opportunity at the hearing by the Hearing Officer to respond to Chloe’s account that Dr. Graham described Chloe as a “bright, fit, young woman” during the March 18 class demonstration, Dr. Graham stated, “That sounds like something I would have said in the situation. I was trying to give the class ideas on how Chloe should market herself.”

Considering the parties’ agreement that Dr. Graham used Chloe as an example for a class demonstration, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham used Chloe as an example for a class demonstration on self-marketing on March 18, 2025 and described her as a “bright, fit, young woman.”

#### *Snapchat Messages on April 1*

Chloe alleged that on April 1 via Snapchat messages, Dr. Graham said he cared about her, called her his star TA with a heart emoji, mentioned that she loved the beach with a bikini emoji, said she can owe him one with a winking face emoji and invited her to dinner.

Chloe stated that Dr. Graham helped her get a marketing internship for the summer. Chloe provided the following screenshot of the Snapchat message exchange from April 1.



Chloe stated, “I was super excited about the internship opportunity but that ‘you can owe me’ message kind of stuck with me. I was honestly a bit nervous, like did he mean that he was expecting something in return, some kind of gross sexual favor? Like I don’t know, that’s probably a bit dramatic, but I don’t know. Also, this message was again late at night, probably around 11 p.m., so just extra weird. And the bikini reference was super creepy.” When asked how the conversation continued, Chloe stated, “Oh I took a screenshot of the chat to send a picture of it to my friends and family, and I told him that. Then he said something like, I insist on taking you out to dinner one night this week to celebrate.” When asked how she responded to that message, Chloe stated, “I didn’t respond. At that point I was really worried that he was expecting something inappropriate in return for his help. It felt really gross.”

Dr. Graham stated that he found an internship opportunity for Chloe with an old colleague of his in Florida. When asked in a follow-up interview how he notified Chloe about the internship opportunity, Dr. Graham stated, “I think I messaged her on Snapchat, since that was our main form of communication at that point.” When asked how Chloe responded to him connecting her with his colleague, Dr. Graham stated, “She was excited of course.” When asked at what point in

the day he messaged her, Dr. Graham stated, “I think it was sometime at night. I wasn’t able to connect with my colleague until after the business day, but I wanted to let her know before he reached out the next day and since I didn’t know if he would reach out to her right away in the morning, I just messaged her later that night.” When asked what time he messaged her, Dr. Graham stated, “Maybe 9 or 10 p.m., which isn’t even late for most college students.” When provided an opportunity to respond to the portion of Chloe’s account regarding Dr. Graham helping Chloe get a summer internship, Dr. Graham stated, “How is this even relevant? There’s nothing wrong with a professor caring about his students! And I was obviously joking about the favor. I feel like the winking face suggests that it is certainly a joke. She was wrong to assume I was implying something else. I would never ever do something like that.” When provided an opportunity to respond to the portion of Chloe’s account that Dr. Graham invited her to dinner, Dr. Graham stated, “I don’t think I insisted, but it’s not like there is anything wrong with a celebration. Again, there was nothing inappropriate about it.”

Considering the screenshot of Chloe and Dr. Graham’s Snapchat exchange on April 1 and Dr. Graham’s acknowledgement of the messages, including where he said he cared about her, he mentioned her owing him a favor, he used a winking face emoji, and he invited her to dinner, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham sent Chloe Snapchat messages on April 1, 2025 saying he cared about her, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, saying she can owe him one with a winking face emoji, and inviting her to dinner.

### *Assistance with Obtaining an Internship*

Chloe alleged that Dr. Graham helped her in obtaining an internship.

Chloe stated that in her conversations with Dr. Graham throughout the spring semester, “I was stressing about finding an internship, so we would talk about that too.” When asked if she initiated any text conversations with Dr. Graham, Chloe stated, “I mean not usually, but maybe, I guess probably about internship stuff since I was stressed and he was helping me navigate the process, like looking for open positions.” Chloe provided the above screenshot of a Snapchat message exchange between her and Dr. Graham on April 1, 2025, where Dr. Graham says, “I recently connected with an old colleague of mine at a marketing agency down in Florida who is willing to offer you a paid internship given my superb recommendation.”

When asked what he spoke about with Chloe following their coffee interaction on February 25, Dr. Graham stated, “I can’t say for sure but probably the other things we usually would talk about. Like her internship search or maybe her family, major things going on in our lives.” When asked if he assisted Chloe in her internship search, Dr. Graham stated, “Yeah. Chloe was such a deserving student, and her work ethic really shined through her TA work. So yes, I told her early on in the semester that I would love to assist her in helping find an internship.” When asked if he ever ended up helping Chloe find an internship, Dr. Graham stated, “Yes. I was about to connect

her with an old colleague of mine in Florida. Like I said, I am always happy to help out a deserving student.” When asked when this occurred, Dr. Graham stated, “April 1, I remember that because she thought it was an April Fool’s joke.” When asked in a follow-up interview how he notified Chloe about the internship opportunity with a colleague, Dr. Graham stated, “I think I messaged her on Snapchat.”

Considering the parties’ agreement that Dr. Graham assisted Chloe in obtaining an internship, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham assisted Chloe in obtaining an internship.

#### *Like and Comment on Chloe’s Instagram Post on April 11*

Chole alleged that Dr. Graham liked and commented on her Instagram video post from April 11, 2025.

Chloe stated, “I noticed that Dr. Graham had liked and commented on one of my videos on Instagram.” When asked what she was doing in the video, Chloe stated, “I do these day-in-the-life videos, and I think in this one I was just picking out my ‘going-out’ outfit. Like I had these cool transitions between different outfits and my followers could comment on their favorites. Dr. Graham commented a number and a fire emoji.” When asked to describe the outfits she was wearing in the video, Chloe stated, “I don’t know, just typical going-to-the-bar stuff, like jeans and a tank top, but it’s just weird because it’s not the kind of stuff I would wear to class or that I would choose for my professors to see.” When asked if Dr. Graham followed her on Instagram, Chloe stated, “I don’t think so. I have a public account so you don’t need to follow me to see my posts.” Chloe provided screenshots of the like and the comment by Dr. Graham.

When asked if he had seen any of Chloe’s social media posts, Dr. Graham stated, “I didn’t follow her or anything like that, but probably since we are in similar locations and she has such a big following, she would pop up on my for-you page on Instagram.” When asked if he ever liked or commented on Chloe’s social media, Dr. Graham stated, “I don’t recall.” When provided an opportunity to respond to the portion of Chloe’s account regarding Dr. Graham liking and commenting on her Instagram post, Dr. Graham stated, “I do not remember that specifically, but if it did happen, I’m a marketing professor supporting my student’s self-branding, it’s part of my job.” When provided an opportunity to respond to the screenshot Chloe provided of Dr. Graham liking and commenting on her Instagram post, Dr. Graham stated, “Okay, so I did post that.”

Considering the screenshots of Dr. Graham’s like and comment on Chloe’s April 11 Instagram post and Dr. Graham’s agreement after he viewed the screenshots, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham liked and commented on Chloe’s Instagram post from April 11, 2025.

*Invitation to an Out-of-Town Conference and Comment that Dr. Graham Would Be Lonely Without Chloe*

Chloe alleged that following her request to stop using Snapchat with Dr. Graham, he invited her to attend an out-of-town conference and said, “I’ll be lonely on the long drive without you” via Snapchat on April 17.

Chloe stated that during an in-person conversation on April 14 she asked Dr. Graham to return to communicating through emails or text messages instead of Snapchat and that Dr. Graham said yes, but “didn’t actually follow through on that.” Chloe stated, “He Snapchatted me again, asking about taking a trip with him to a speaking event he had during finals week. Again, these messages were later at night, at least after 8 p.m. I told him no, that I wasn’t going to go with him. I think I made up some excuse like I needed to study for my exams, which I guess was partly true, but even so, there was no way I was going to sit in a car with him to drive two hours there and back. With the semester ending soon, I did not feel the need to do everything he asked of me anymore, especially this optional thing. At this point, I was just uncomfortable being alone around him.” When asked how Dr. Graham responded to her saying she needed to study, Chloe stated, “He was like, ‘I’ll be lonely on the long drive without you, but I understand, exams are important.’” When asked how that comment made her feel, Chloe stated, “The whole conversation, the invite itself, that comment about being lonely. It all made me feel kind of nauseous actually, like I did not ask for nor want any of this extra attention.”

When asked if Chloe ever expressed concern about communicating on Snapchat, Dr. Graham stated, “One time she asked about switching back to text messaging. She didn’t say why, but I was fine going back to text messages instead of Snapchat, although I may have forgotten and kept using Snapchat.” When asked when Chloe had asked to switch back to texting, Dr. Graham stated, “Hmm, that was maybe sometime in mid-April.” When asked what he communicated with Chloe on Snapchat after their mid-April conversation, Dr. Graham stated, “Hmm at that point we had kind of wrapped up most our projects and the coursework was set to finish up there by the end of April. I was speaking at a conference during finals week in the first week of May, I think I invited her to that.” When asked where the conference was, Dr. Graham stated, “In Plainsville, about two hours from here. I thought it would be a good opportunity for her, but she said no, that she needed to study for finals, which makes sense, it was kind of last minute.” When asked what time he sent these messages, Dr. Graham stated, “Probably sometime in the evening after I had wrapped up for the day.” At the hearing, when given the opportunity by the Hearing Officer to respond to Chloe’s account during the investigation that when Chloe declined his invitation to the speaking event and said she needed to study, Dr. Graham responded by saying, “I’ll be lonely on the long drive without you, but I understand, exams are important,” Dr. Graham stated, “I don’t recall saying that I would be lonely without her. It was only a two-hour drive. I didn’t need someone to come with me. I just thought it would be a good opportunity for her.”

Considering the parties' agreement that Dr. Graham invited Chloe to an out-of-town conference via Snapchat following Chloe's request to no longer communicate with Dr. Graham via Snapchat, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham invited Chloe to an out-of-town conference with him on April 17, 2025 via Snapchat. Considering the parties' disagreement regarding whether Dr. Graham told Chloe he would be lonely on the long drive without her, and considering the lack of witnesses or other outside evidence regarding the comment, the Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham told Chloe he would be lonely on the long drive without her on April 17, 2015 via Snapchat.

### *Hug and Back Rub on April 25*

Chloe alleged that while in Dr. Graham's office on April 25, 2025, Dr. Graham hugged her and rubbed her back.

Chloe stated, "And then he touched me again when we did our final meeting for the semester. I went into his office and he said goodbye and then he hugged me." When asked to further describe the conversation, Chloe stated, "Well first he closed the office door, which made me kind of nervous but then he was saying thank you and how he was going to miss me and this kind of stuff. I was just trying to get it over with, I said thank you for the TA experience and the internship." Chloe stated that they had a conversation about her serving as his TA next year, during which Dr. Graham said he would be "lost without [her]" and that "there would always be a spot for [her] as his TA." Chloe stated that after the conversation, "I got up to leave, and then he immediately also stood up and started approaching me, arms open. So I hugged him to get it over with, but Dr. Graham like held me kind of firmly, I guess, more so than I was doing to him that's for sure." Chloe stated, "And also, when he was hugging me, he was like rubbing my back, like in the small of my back." When asked how long they hugged for, Chloe stated, "Maybe like 10 seconds." When asked how long Dr. Graham was rubbing her back for, Chloe stated, "Almost like the whole time we were hugging, maybe eight seconds."

When asked if he and Chloe ever hugged, Dr. Graham stated, "I think our last meeting of the semester we hugged. It's not a big deal, lots of professors hug their students." When asked to describe that last meeting, Dr. Graham stated, "We just talked about the summer and I asked if she wanted to be my TA again next year." At the hearing, when given an opportunity by the Hearing Officer to respond to Chloe's account that during their conversation about her being his TA the next year, Dr. Graham said he would be "lost without [her]" and that "there would always be a spot for [her] as his TA," Dr. Graham stated, "Yeah, I probably said those things. She was a good TA." When asked at the hearing by the Hearing Officer if he rubbed Chloe's back during the hug, Dr. Graham stated, "No, definitely not." When asked by the Hearing Officer how long the hug lasted, Dr. Graham stated, "A few seconds." When given an opportunity by the Hearing Officer to respond to Chloe's account that the hug lasted 10 seconds, Dr. Graham stated, "no way. It was a quick hug." When asked by the Hearing Officer if he closed the door to his office

while he was meeting with Chloe on April 25, Dr. Graham stated, “Probably. I usually close my office door. The hallway outside my office is pretty loud.”

Considering the parties’ agreement that Dr. Graham hugged Chloe during their last meeting of the spring semester, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham hugged Chloe in his office on April 25, 2025. However, considering the parties’ disagreement as to whether Dr. Graham rubbed Chloe’s back during the hug and considering there is no outside evidence on the issue, the Panel finds insufficient evidence to determine it is more likely than not that Dr. Graham rubbed Chloe’s back while the two were hugging.

*Gift of a Journal and Comment “A Parting Gift to Remember Me by While You Are in Florida this Summer” on April 25*

Chloe alleged that while meeting with Dr. Graham in his office on April 25, 2025, Dr. Graham gave her a gift of a journal and said, “A parting gift to remember me by while you are in Florida this summer,” and gave her a photo of himself with Duke with a note that said, “Have a great time in Florida, we will be thinking about you.”

Chloe stated, “After he gave me a hug, he grabbed a package from his desk drawer. He was like, ‘A parting gift to remember me by while you are in Florida this summer.’ It was a journal with a palm tree on the front. Which the journal was nice, but there was this picture of him and Duke tucked inside the front cover. On the back of the photo it said something like ‘Have a great time in Florida, we will be thinking about you.’ I just threw that away because looking at, honestly even talking about it now, makes me nauseous.” When asked to further describe how she felt about Dr. Graham giving her this gift, Chloe stated, “I was honestly just done with him at that point. I was already in the mindset that I wasn’t going to work with him again next year, and I was going to do everything I could to avoid running into him, so I probably just said, ‘thank you’ to get it over with and left his office.”

When asked if he ever gave Chloe a gift, Dr. Graham stated, “In that last meeting of the semester, I gave Chloe a journal. I almost always give my TAs a gift at the end of the year. It’s just a small way of showing my appreciation for all they’ve done for me.” Dr. Graham stated, I think it had a palm tree on the front since she was going to Florida for the summer.” When asked if he said anything when he gave her the gift, Dr. Graham stated, “Oh, probably just like ‘thanks for everything’ or something like that.” When asked in a follow-up interview, if he gave her anything else with the journal, Dr. Graham stated, “There was a little card with a picture of Duke, wishing her good luck.” When provided an opportunity to respond to Chloe’s account that he said, “A parting gift to remember me by while you are in Florida this summer,” Dr. Graham stated, “I honestly do not remember, but I could have said that.” When provided an opportunity to respond to Chloe’s account that inside the journal there was a picture of him with Duke and a note that said “Have a great time in Florida, we will be thinking about you,” Dr. Graham said,

“Like I said, I remember including a picture of Duke and wishing her luck, but I didn’t say we’d be thinking of her.”

Considering the parties’ agreement that Dr. Graham gave Chloe a journal and Dr. Graham’s account that he could have said, “A parting gift to remember me by while you are in Florida this summer,” and that he gave her a photo that included his dog and a note, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham gave Chloe a journal, said, “A parting gift to remember me by while you are in Florida this summer,” and gave Chloe a photo that included his dog and a note on April 25, 2025.

The parties’ accounts differ as to whether Dr. Graham included a photo of both himself and Duke and as to what the note on the photo said, and the Panel finds that there is no evidence outside the parties’ accounts to tip the scales between the parties’ conflicting accounts so as to overcome the presumption of nonresponsibility regarding whether Dr. Graham was in the gifted photo and regarding what the note on the photo said. Therefore, the Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham was in the gifted photo and that the photo said he would be thinking about her.

#### Summary of What Conduct Occurred

In summary, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham:

- Sent Chloe a text message on February 4, 2025 saying, “maybe you’ll have to come around more often”
- Suggested to Chloe that they go to a new restaurant/bar together in early February
- Asked Chloe about her weekend plans, made a comment about her not having a Valentine’s date, and commented about his wife by saying “Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again,” during their February 14, 2025 conversation
- Sent Chloe a text message commenting about a “hot girl walk” and suggesting he join Chloe on a walk on February 15, 2025
- Invited Chloe to get coffee in a text message exchange on February 24, 2025
- Discussed separating from his wife while getting coffee with Chloe on February 25, 2025
- Touched Chloe’s hand and said “it means a lot that I can be real with you” while they were getting coffee on February 25, 2025
- Commented about Chloe’s hair and clothes
- Responded to Chloe’s post on her Snapchat story saying something about it looking hot there, along with a picture of his dog with the statement “miss you” with a heart emoji
- Commented about Chloe looking tan and about moving out of his house with his wife, and said to Chloe, “it’s good to have you back” on March 18, 2025

- Gave Chloe her favorite candy on March 18, 2025
- Used Chloe as an example for a class demonstration on self-marketing on March 18, 2025 and described her as a “bright, fit, young woman”
- Sent Chloe Snapchat messages saying he cared about her, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, saying she can owe him one with a winking face emoji, and inviting her to dinner on April 1, 2025
- Assisted Chloe in obtaining an internship
- Liked and commented on Chloe’s Instagram post from April 11, 2025
- Invited Chloe to attend an out-of-town conference with him on April 17, 2025 via Snapchat
- Hugged Chloe in his office on April 25, 2025
- Gave Chloe a journal, said, “A parting gift to remember me by while you are in Florida this summer,” and gave Chloe a photo that included his dog and a note on April 25, 2025

However, the Hearing Officer finds insufficient evidence to determine that it is more likely than not that Dr. Graham:

- Asked Chloe about her weekend plans every week
- Said, “Oh sure, I bet that’s not true. I find it hard to believe someone like you doesn’t have a date,” on February 14, 2025
- Responded to Chloe’s post on her Snapchat story stating, “looks like you’re having a good time on spring break”
- Told Chloe he would be lonely on the long drive without her on April 17, 2025 via Snapchat
- Rubbed Chloe’s back while the two were hugging on April 25, 2025
- Gave Chloe a photo that included himself and a note that said he would be thinking about her

Having determined what alleged conduct more likely than not occurred, the Panel next considers whether such conduct constitutes Title IX Hostile Environment Harassment or Non-Title IX Hostile Environment Harassment, as those terms are defined by the Policy.

To meet the definition of Title IX Hostile Environment Harassment, the conduct must be (1) on the basis of sex, (2) unwelcome, and (3) determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity. Similarly, to meet the definition of Non-Title IX Hostile Environment Harassment, the conduct must be (1) on the basis of sex and (2) unwelcome. However, Non-Title IX Hostile Environment Harassment has a different standard as to the third factor. Under the Policy, Non-Title IX Hostile Environment Harassment occurs when the unwelcome conduct on the basis of sex is determined by a reasonable person to be so severe or pervasive that it substantially and unreasonably interferes with an individual’s

employment or education, or creates an intimidating, hostile, or offensive employment or educational environment.

### On the Basis of Sex

The Panel first determines whether the conduct found to have occurred above was on the basis of sex. The Policy states that conduct is on the basis of sex when the conduct is sexual in nature or is referencing or aimed at a particular sex.

For some of Dr. Graham's earlier conduct, the Panel finds insufficient evidence to determine that the conduct was on the basis of sex. With regard to the comment, "maybe you'll have to come around more often" and the suggestion they try a new restaurant/bar in early February, the Panel finds nothing overtly sexual about the comment, nor had Dr. Graham engaged in any other sexual conduct at that point. While the Panel recognizes that the comment "maybe you'll have to come around more often" could be interpreted as an invitation to spend time with Dr. Graham at his house, the comment was made in the context of Chloe dog sitting for Dr. Graham while he was out of town and was preceded by the statement, "He (the dog) looks happy." Similarly, while Dr. Graham's suggestion that he and Chloe try a new restaurant/bar together could be seen as a romantic invitation, there is nothing about the context of the statement to indicate that there were romantic or sexual overtones to it. Rather, the parties agree that Chloe had shared her plans to go out for drinks with her friends that night. Chloe stated that she then mentioned her interest in trying a new place that also supposedly had a good happy hour. The parties agree that it was after Chloe shared her plans to get drinks with friends that Dr. Graham suggested they get drinks or try the new restaurant/bar together. Therefore, the context of the conversation—getting drinks with friends—does not indicate a romantic or sexual purpose in Dr. Graham's suggestion. In reaching this determination, the Panel considered that Dr. Graham's suggestion that he and Chloe get drinks may have been inappropriate in light of Dr. Graham's position of authority as a professor. However, without any sexual or romantic statements or actions that accompanied or preceded the suggestion, and considering the presumption of nonresponsibility, the Panel finds that the power dynamic between the parties is insufficient on its own to prove that the comment was more likely than not on the basis of sex. Therefore, considering the lack of any overtly romantic or sexual comments or actions in conjunction with or preceding these two comments, and considering the presumption of non-responsibility, the Panel concludes there is insufficient evidence to determine that it is more likely than not that the text message saying to "maybe you'll have to come around more often" and the suggestion they try a new restaurant/bar in early February are on the basis of sex.

However, after these initial comments, Dr. Graham's conduct became sexual or sex-based in nature. In particular, Dr. Graham's February 14 comment about his wife, which was made in the context of a discussion of Valentine's Day plans shared about his romantic relationship with his wife. Additionally, Dr. Graham's comment about Chloe not having a Valentine's date related to Chloe's romantic life. Similarly, his February 15 text messages included a reference to a "hot girl

walk” and an offer for him to join her on her walk. Implying that Chloe was a “hot girl” was clearly sexual in nature and the offer to join her on a walk was not only an invitation to spend time alone together outside of school but also took on a sexual or romantic connotation in light of the fact that it followed closely after the “hot girl walk” comment. Furthermore, the sexual or sex-based nature of Dr. Graham’s comments on February 14 and 15 was increased by the fact that the conduct was overly personal for the context of the professor-teaching assistant relationship. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham’s comment about Chloe not having a Valentine’s date and statement that “Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again” on February 14, and his comment about Chloe taking a “hot girl walk” and offer to join Chloe on her walk on February 15 were on the basis of sex.

The Panel finds that Dr. Graham continued to engage in sexual or sex-based conduct following the February 14 and 15 comments. On February 24, 2025, Dr. Graham invited Chloe to get coffee in a text message exchange. While a professor may suggest to get coffee with a teaching assistant to discuss upcoming teaching assistant-related tasks, Dr. Graham’s text messages conveying the invitation went beyond simply suggesting a professional meeting. The text messages included the statement, “You’re the best” with a heart-eyes emoji and the statement, “I look forward to connecting! Would be lost without you!” These overly personal messages give the invitation a sexual or sex-based connotation. Furthermore, this invitation occurred after the February 14 and 15 comments that have been found to be sexual or sex-based in nature, thereby causing the invitation also to take on a more sexual or sex-based nature. Therefore, considering the content of the text message invitation and the context of prior sexual or sex-based conduct, the Panel finds sufficient evidence to determine it was more like than not that Dr. Graham’s invite to get coffee on February 24 was on the basis of sex.

Additionally, on February 25 while Dr. Graham and Chloe were meeting for coffee, Dr. Graham made a comment about separating from his wife, placed his hand on Chloe’s hand, and said, “It means a lot that I can be real with you.” This conduct, especially considering that it all occurred close together within the same conversation, was also sexual or sex-based. Not only did Dr. Graham discuss the status of his romantic relationship with his wife but then he soon after touched Chloe’s hand and said, “It means a lot that I can be real with you.” Additionally, this conduct occurred following the invitation Dr. Graham sent to Chloe the day before found above to be sexual or sex-based, as well as the prior February 14 and 15 sexual or sex-based conduct, all of which caused Dr. Graham’s conduct at the coffee shop to take on an even more sexual or sex-based nature. Furthermore, all of this conduct was overly personal within the context of the professor-teaching assistant relationship, making it take on a more sexual or sex-based nature. Therefore, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham’s February 25 conduct including commenting about separating from his wife, placing his hand on Chloe’s hand, and saying “It means a lot that I can be real with you,” was on the basis of sex.

Additionally, Dr. Graham's comments on Chloe's hair and clothes, while not overtly sexual, were comments on her appearance, which carry a sexual or sex-based connotation. Furthermore, the Panel finds that the context of the more sexual or sex-based comments on February 14 and 15 and 24 and 25 caused these comments on appearance to take on more of a sexual or sex-based nature. In reaching this finding, the Panel considered that Dr. Graham stated, "And I would just like to add, it wasn't like I said stuff to Chloe regularly, like once or twice, and it wasn't like I was trying to single her out. I would comment on other students' hair or outfits or style or whatever if they switched up," and also stated, "I'm a marketing professor. I want students to be mindful of how they present themselves. So if they look professional and put-together, I'm going to point it out." However, while Dr. Graham's statement indicates that he commented on all students' appearances, Noah's account contradicts Dr. Graham's statement. When asked if Dr. Graham ever made comments about the appearance of any of the students, Noah stated, "Mostly about his TA, Chloe. Sometimes, I would overhear him say that he liked her hair or her outfit or something like that." Therefore, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham's comments about Chloe's hair and clothes were on the basis of sex.

Dr. Graham continued to engage in sexual or sex-based conduct by responding to Chloe's March 14 Snapchat post of her in a bikini on spring break by saying something about it looking hot there and including a picture of his dog with the statement "miss you" with a heart emoji. These comments related to Chloe's personal life, were carried out through personal Snapchat communication, were made in response to a post that included a picture of Chloe in a bikini, and included the affectionate message, "miss you" with a heart emoji. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham's March 14 messages in response to Chloe's spring break Snapchat post were on the basis of sex. In reaching this determination, the Panel considered that Dr. Graham stated that he meant his dog Duke missed Chloe and that Chloe stated that after she showed Marcy the message, she told Marcy, "I think maybe Dr. Graham is talking about how the dog misses me." However, even if that was the intended meaning of Dr. Graham's message, the message, which contained a heart emoji, is still overly personal, carried out through personal Snapchat communication, and in response to a picture of Chloe in a bikini. As such, particularly in the context of the other sexual or sex-based conduct that occurred prior to the messages, the Panel still find the messages to be sexual or sex-based in nature.

On March 18, Dr. Graham again engaged in sexual or sex-based conduct when he made comments about Chloe looking tan, about him moving out of his house with his wife, and about it being good to have Chloe back, and gave Chloe her favorite candy. The comments again pertained to Chloe's appearance and Dr. Graham's relationship with his wife and expressed appreciation or affection for Chloe. Additionally, the candy gift was particularly personal in that Dr. Graham remembered Chloe's favorite candy and gave it to her. As with the instances described above, the Panel considers that these comments and the candy gift all occurred close in time to one another within the same conversation and that the near-simultaneous timing of these comments and actions increases their sexual or sex-based nature. In determining its finding, the

Panel considered Dr. Graham's statement that the gifts he gave Chloe were to "thank her for all the hard work she's done." While a professor gifting candy to a teaching assistant is not overtly on the basis of sex on its own, the context of the previously sexual or sex-based conduct and the combination of the gift with the sexual or sex-based comments such as the comment about Chloe looking tan and comments about moving out of his house with his wife, cause the giving of the candy to take on a sexual or sex-based nature. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham's comments to Chloe on March 18 about her looking tan, about him moving out of his house with his wife, and about it being good to have Chloe back, along with his gift of candy, were on the basis of sex.

With regard to Dr. Graham's use of Chloe for a self-marketing class demonstration on March 18 and his description of Chloe as a "bright, fit, young woman," the Panel finds sufficient evidence to determine that it is more likely than not that the conduct was on the basis of sex. Unlike teachings about self-marketing generally, Dr. Graham's comment that Chloe is a "bright, fit, young woman" and his initiation of a conversation about Chloe's fitness let the students to make comments specifically directed at issues of appearance and attractiveness, along with other aspects personal to Chloe. The overly personal nature of such conduct is also increased in the context of the power differential of a male college professor engaging in such conduct toward a female student in front of other students. In making this finding, the Panel considered the following statement from Dr. Graham: "I'm not sure why this is even an issue. As a professor, I have every right to decide what content I want to cover in my classes. It is completely inappropriate for you to even be asking me about this given my academic freedom rights. As I said before, self-branding is so important for marketing professionals today, so it is critical that the students are able to practice highlighting personal strengths. In the past I had used a celebrity example but I think students struggle to think outside of how the celebrity has already branded themselves." However, asking students to contribute to conversation related to Chloe's appearance moves beyond any general discussion about self-marketing. The Panel further notes that even Dr. Graham's description of Chloe as a "bright, fit, young *woman*" specifically highlighted her sex, along with aspects of her appearance. Finally, to the extent a professor engages in sex-based harassing conduct in the classroom, such conduct is not excused under concepts of academic freedom. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham's use of Chloe for a self-marketing demonstration and his description of Chloe as a "bright, fit, young woman" on March 18 was on the basis of sex.

Dr. Graham continued engaging in sexual or sex-based conduct by messaging Chloe on Snapchat on April 1 at 11 p.m., saying that a former colleague of his would be reaching out to her about an internship opportunity in Florida. In this message exchange, Dr. Graham said that he cared about Chloe, called Chloe his star TA with a heart emoji, mentioned that she loved the beach with a bikini emoji, said she can owe him one with a winking face emoji, and invited her to dinner. While it is not outside the typical context of a professor-teaching assistant relationship for a professor to help a teaching assistant obtain an internship, Dr. Graham went beyond the norm of an appropriate professor-teaching assistant relationship by making the additional comments he

made to Chloe late at night through Snapchat and including suggestive comments and emojis. In reaching its determination, the Panel considered Dr. Graham's account that "[t]here's nothing wrong with a professor caring about his students," he was "obviously joking" about the favor, the winking face suggests that it was a joke, Chloe was wrong to assume he was implying something else, and he would never do something like that. However, the Panel finds that these statements are inconsistent with other evidence in the record, namely that a male former teaching assistant of Dr. Graham, Isaac, stated in his account that Dr. Graham would largely only speak with him about teaching assistant work during scheduled meetings times and through quick occasional text messages. The Panel also notes that Dr. Graham's April 1 message not only followed the other sexual or sex-based conduct described above, but also specifically referenced one instance of sexual or sex-based conduct when he said, "Plus we know how much you love the beach" followed by a bikini emoji, thereby referencing Chloe's spring break Snapchat post that included a picture of her in a bikini, to which Dr. Graham responded with sexual or sex-based comments. Furthermore, as with other conduct described above, the fact that the comments in the April 1 message exchange occurred close in time within the exchange increases the sexual nature of the comments. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham's April 1 Snapchat messages saying that he cared about Chloe, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, saying she can owe him with a winking face emoji, and inviting her to dinner, were more likely than not on the basis of sex.

The Panel finds that Dr. Graham's sexual or sex-based conduct continued on April 11 when he liked and commented on Chloe's Instagram post about which outfit she should wear. Not only did this comment again pertain to Chloe's appearance, but it also was accompanied by a fire emoji. In making this determination, the Panel considered that Dr. Graham stated, "I'm a marketing professor supporting my student's self-branding, it's part of my job," and when provided an opportunity to respond to the screenshots Chloe provided of Dr. Graham liking and commenting on her Instagram post, Dr. Graham stated, "I don't think there's anything inappropriate about that." However, as discussed with other instances, in light of this conduct following a pattern of conduct on the basis of sex and the nature of Chloe's post featuring her modeling different outfits and Dr. Graham comment on which outfit to wear, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham's like and comment on Chloe's Instagram post were on the basis of sex.

Dr. Graham continued to engage in similar conduct on April 25 when he hugged Chloe, gave her a journal, made the comment, "A parting gift to remember me by while you are in Florida this summer," and gave her a photo with his dog and a note during a conversation in his office with his door closed. The combination of a personal gift, an overly personal comment, and physical contact in a closed-door setting, all with the backdrop of the above-described pattern of conduct on the basis of sex, caused the conduct to take on a sexual or sex-based nature. In determining its finding, the Panel considered Dr. Graham's statement that the gift was "[to] show my appreciation" and that he "almost always give[s] my TAs a gift at the end of the year." However,

the Panel also considered the distinction between Isaac's and Chloe's experiences with gifts from Dr. Graham – Isaac stating that he had never received a gift from Dr. Graham. Additionally, Dr. Graham's comment of "A parting gift to remember me by while you are in Florida this summer," indicated that the gift was more personal rather than a mere appreciation for Chloe's hard work. Thus, the Panel finds sufficient evidence to determine it is more likely than not that Dr. Graham hugging Chloe and giving her a journal and a photo of his dog with a note on April 25 were on the basis of sex.

While the Panel has found that Dr. Graham engaged in a series of conduct on the basis of sex throughout the spring 2025 semester, the Panel nonetheless finds that some of the conduct found to have occurred was typical of a professor-teaching assistant relationship and therefore did not take on a sexual or sex-based nature, even in the context of the general pattern of conduct on the basis of sex found to have occurred. Specifically, Dr. Graham invited Chloe to an out-of-town conference on April 17. Even though the invite occurred over Snapchat, the conference was two hours away, and Chloe stated that the invite was made around 8 p.m., Dr. Graham stated that he viewed the conference as a good opportunity for Chloe. While Chloe alleged that Dr. Graham stated, "I'll be lonely on the long drive without you" after she declined the invitation, Dr. Graham denied making that statement at the hearing, and the Panel found insufficient evidence to determine that it is more likely than not that Dr. Graham made the comment. The Panel finds that a professor inviting his teaching assistant to accompany him to a work-related speaking engagement would be part of a typical professor-teaching assistant relationship and does not without more carry sexual or sex-based connotations. The Panel finds even the context of the pattern of conduct on the basis of sex in which Dr. Graham engaged throughout the spring 2025 semester to be insufficient to cause such typical professor-teaching assistant conduct to take on a sexual or sex-based nature. Therefore, the Panel finds insufficient evidence to determine it is more likely than not that Dr. Graham's April 17 conference invite was on the basis of sex.

Finally, while the Panel has found that Dr. Graham's April 1 Snapchat messages informing Chloe about her internship to be on the basis of sex, the Panel finds insufficient evidence to determine that it is more likely than not that the act of assisting Chloe in obtaining the internship was on the basis of sex. Again, helping a TA get an internship is conduct that is typical in a professor-teaching assistant relationship, and, as such, even the context of the pattern of conduct on the basis of sex in which the Panel has found Dr. Graham engaged is insufficient to cause such typical conduct by a professor to take on a sexual or sex-based nature. In reaching this finding, the Panel considered that Dr. Graham's April 1 Snapchat included a comment about Chloe owing him with a winking emoji and an invitation to dinner. However, the sexual or sex-based nature of such comments is derived from the comments themselves, not from Dr. Graham's act of helping Chloe secure the internship. Furthermore, while Chloe stated in her formal complaint that she felt like the internship was just a way for Dr. Graham to get closer to her, both parties gave accounts of Chloe reaching out to Dr. Graham about looking for an internship, indicating that Chloe saw his assistance with finding an internship to be part of their professor-teaching assistant relationship. Therefore, the Panel finds insufficient evidence to

determine that it is more likely than not that Dr. Graham assisting Chloe in obtaining an internship was on the basis of sex.

In summary, the Panel concludes that there is sufficient evidence to determine it was more likely than not that the following conduct was on the basis of sex:

- Asking Chloe about her weekend plans, making a comment about her not having a Valentine's date, and commenting about his wife by saying "Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again," during their February 14, 2025 conversation
- Sending Chloe a text message commenting about a "hot girl walk" and suggesting he join Chloe on a walk on February 15, 2025
- Inviting Chloe to get coffee in a text message exchange on February 24, 2025
- Discussing separating from his wife while getting coffee with Chloe on February 25, 2025
- Touching Chloe's hand and saying "it means a lot that I can be real with you" while they were getting coffee on February 25, 2025
- Commenting about Chloe's hair and clothes
- Responding to Chloe's post on her Snapchat story saying something about it looking hot there, along with a picture of his dog with the statement "miss you" with a heart emoji
- Commenting about Chloe looking tan and about moving out of his house with his wife, and saying to Chloe, "it is good to have you back" on March 18, 2025
- Giving Chloe her favorite candy on March 18, 2025
- Using Chloe as an example for a class demonstration on a self-marketing on March 18, 2025 and describing her as a "bright, fit, young woman"
- Sending Chloe Snapchat messages saying he cared about her, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, saying she can owe him one with a winking face emoji, and inviting her to dinner on April 1, 2025
- Liking and commenting on Chloe's Instagram post from April 11, 2025
- Hugging Chloe in his office on April 25, 2025
- Giving Chloe a journal, saying, "A parting gift to remember me by while you are in Florida this summer," and giving Chloe a photo that included his dog and a note on April 25, 2025

However, the Panel concludes that there is insufficient evidence to determine it was more likely than not that the following conduct was on the basis of sex:

- Sending Chloe a text message on February 4, 2025 saying, "maybe you'll have to come around more often"
- Suggesting to Chloe that they go to a new restaurant/bar together in early February
- Inviting Chloe to an out-of-town conference with him on April 17, 2025, via Snapchat

- Assisting Chloe in obtaining an internship

### Unwelcome

Having determined what conduct found to have occurred was on the basis of sex, the Panel next determines whether the conduct was unwelcome as to Chloe. Under the Policy, conduct is unwelcome when the individual did not request or invite the conduct and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

The Panel finds that the only form of conduct that Chloe welcomed was Dr. Graham's invitation to Chloe to get coffee and discuss class on February 24, Chloe stated, "The Valentine's Day thing was still kind of stuck in my head, but I agreed to go because it was about school, and I did have a few questions about the class I was covering." While Chloe did not request nor invite Dr. Graham's invitation for coffee, Chloe agreed to meet Dr. Graham at the coffee shop and gave no indication that she objected to Dr. Graham's invitation. Rather, she stated that she went because it was about school and she did have questions for him about the class she would be covering. Therefore, the Panel finds insufficient evidence to determine it was more likely than not Dr. Graham's invitation to meet for coffee was unwelcome as to Chloe. In reaching this determination, the Panel considered that when asked at the hearing by the Hearing Officer how she felt about the February 24 text exchange that included the comments "You're the best" with a heart-eyes emoji and "Would be lost without you," Chloe stated, "I don't think I thought much of it at first, but then when I went back and read this after we got coffee and the things that happened there, I feel like that heart-eyes emoji and the comment about being lost without me were really inappropriate." However, Chloe did not regard the comments in the text message as undesirable or offensive until after additional conduct occurred at the coffee shop and thereafter. Therefore, the Panel also finds insufficient evidence to determine that it is more likely than not that the text messages containing the invitation to coffee were unwelcome.

However, the Panel finds sufficient evidence to determine that it is more likely than not that all of the other conduct found above to be on the basis of sex was unwelcome as to Chloe. In describing her response to the various forms of conduct found above to be on the basis of sex, Chloe stated that the conduct was "weird," "awkward," "cringy," and "super creepy," made her "uncomfortable," made her "nauseous," made her "worried," and made her feel "gross." She gave an account of not replying to certain messages, such as Dr. Graham's suggestion that he join her on a walk on February 15, his invitation to dinner on April 1, and his messages asking

about her internship in or around May. While Chloe stated that she laughed at or brushed off some comments, she made it clear that such responses were made in an effort to not make the situation more awkward or impact her position as Dr. Graham's teaching assistant or her chances of receiving a letter of recommendation or help securing an internship.

Chloe's account that the conduct made her uncomfortable is corroborated by Marcy's account that Chloe showed her Dr. Graham's response to her Snapchat story during spring break and then told Marcy about some of the "weird stuff" that Dr. Graham had been doing and that Chloe FaceTimed her after Dr. Graham sent her the April 1 Snapchat messages about the internship and "she was really worried that Dr. Graham was expecting something romantic or sexual in return because of some comment he made about her 'owing' him and then insisting that she go out to dinner with him."

Chloe's discomfort was also evident from both parties' accounts that Chloe asked Dr. Graham if they could stop communicating via Snapchat and go back to communicating through text and, according to Chloe's account, email. Chloe stated, "The following Monday after I noticed the Instagram thing, I asked Dr. Graham after class if we could go back to communicating through emails or texts instead of Snapchat. The thought had crossed my mind earlier, but I just kind of brushed it off but like between the spring break thing, 'owing him' for the internship, the dinner thing, the self-marketing project, the Instagram video, it was just getting too weird. I was already talking to another professor, Dr. Owens, about TAing for her next year, because I honestly just was so weirded out by Dr. Graham. I felt like I couldn't talk to many people about it because I didn't want them to judge me for sticking around as long as I did. But anyways, Dr. Graham said yes, although he didn't actually follow through on that." When asked if Chloe ever expressed concern about communicating on Snapchat, Dr. Graham stated, "One time she asked about switching back to text messaging. She didn't say why, but I was fine going back to text messages instead of Snapchat, although I may have forgotten and kept using Snapchat."

Therefore, Chloe's account, Marcy's account, and even Dr. Graham's account about Chloe's request to stop communicating via Snapchat indicate that Chloe regarded the following conduct by Dr. Graham as undesirable or offensive: the February 14 comments about Chloe's weekend plans and Dr. Graham's wife; the February 15 text messages about a "hot girl walk" and joining Chloe on a walk; the comments and hand touching during the parties' conversation at the coffee shop on February 25; the comments on Chloe's hair and clothes; the March 14 comments in response to Chloe's Snapchat story on spring break; the comments and candy gift in his office on March 18; the class demonstration on March 18; the April 1 Snapchat messages; the like and comment on Chloe's Instagram post on April 11, and the hug, gifts, and comment in his office on April 25.

In reaching this finding, the Panel considered that Chloe did not always express her feelings about Dr. Graham's conduct. However, Chloe indicated that the power differential at play between Dr. Graham and her prevented her from making her feelings known. Furthermore, as

described above, there were times when Chloe's response did indicate that she regarded the conduct as undesirable or offensive, such as when she did not respond to messages, told Marcy about some of the conduct, and asked Dr. Graham to stop communicating with her via Snapchat. In reaching this finding, the Panel considered that Chloe agreed to exchange phone numbers with Dr. Graham and agreed that she initiated at least one personal text exchange with him. The parties agreed they exchanged phone numbers in January. Chloe stated, "Honestly, I felt a little weird about giving a professor my number and I was like, 'why can't we just communicate through email?'" When asked if she asked Dr. Graham, "why can't we communicate through email?" Chloe stated, "I didn't say that out loud, I just thought that in my head. At that point, I just felt like I needed to make a good impression as his TA, and I was worried that not sharing my number would make things weird with Dr. Graham." Dr. Graham stated that he exchanged phone numbers with all his past and present TAs, and "I feel like calling and texting is just easier than email. Kids are more accessible on their phone. Students typically struggle with checking their email." Additionally, Dr. Graham stated, "I think it is important for you to know that I wasn't the one to initiate all of the text messages. There were several times when Chloe would text me to tell me something about her family or ask for restaurant recommendations and things like that." When provided an opportunity to respond to this account, Chloe stated, "So I like I messaged him one time telling him my grandparents were coming because I wanted his advice on restaurants to take them to, something a little higher end than places my friends and I go." While Chloe agreed to exchange personal phone numbers with Dr. Graham and initiated at least one text message exchange of a personal nature, the Panel finds such actions to be insufficient to indicate that Chloe welcomed text messages from Dr. Graham of a sexual or sex-based nature.

In determining its finding, the Panel also considered the account of Dr. Eileen Einerson, a professor in the Marketing Department, who stated during the hearing that it is common for professors in the department to communicate with their students via text messages and to engage with students on social media. Dr. Einerson stated that, since social media is such a significant marketing tool, professors need to train and observe students on it. While Dr. Einerson's account may speak to a general sense of comfortability for marketing students engaging digitally with professors, Dr. Einerson's account does not speak to Chloe's welcomeness of Dr. Graham's specific conduct—namely the specific comments that he made and messages that he sent via text and social media. Chloe's account about how Dr. Graham's engagement on her Instagram led to her decision to seek a teaching assistant position with another professor and to ask Dr. Graham to stop communicating with her via Snapchat reflect how Dr. Graham's conduct was undesirable for Chloe.

In reaching its finding, the Panel also considered Dr. Graham's account that he figured the Marketing 101 demonstration "would not be a problem since [Chloe] was already building a TikTok and Instagram following." However, the mere act of Chloe maintaining a social media following does not invite others—particularly her professor—to make comments about her appearance in a classroom setting. The Panel likewise considered that some of the comments Dr. Graham made on social media were in response to posts by Chloe to which Dr. Graham had

access either by him and Chloe adding each other on Snapchat or because Chloe's Instagram profile was public. However, the Panel finds that allowing such access is insufficient to indicate that Chloe welcomed the specific responses that Dr. Graham made to her social media posts.

In summary, the Panel finds sufficient evidence to determine it is more likely than not that the following conduct by Dr. Graham was unwelcome as to Chloe under the Policy:

- Asking Chloe about her weekend plans, making a comment about her not having a Valentine's date, and commenting about his wife by saying "Brittany has been in a mood lately. It will probably just end up being me and Duke falling asleep to basketball again," during their February 14, 2025 conversation
- Sending Chloe a text message commenting about a "hot girl walk" and suggesting he join Chloe on a walk on February 15, 2025
- Discussing separating from his wife while getting coffee with Chloe on February 25, 2025
- Touching Chloe's hand and saying "it means a lot that I can be real with you while they were getting coffee on February 25, 2025
- Commenting about Chloe's hair and clothes
- Responding to Chloe's post on her Snapchat story saying something about it looking hot there, and including a picture of his dog with the statement "miss you" with a heart emoji
- Commenting about Chloe looking tan and about moving out of his house with his wife, and saying to Chloe, "it's good to have you back" on March 18, 2025
- Giving Chloe her favorite candy on March 18, 2025
- Using Chloe as an example for a class demonstration on a self-marketing on March 18, 2025 and describing her as a "bright, fit, young woman"
- Sending Chloe a Snapchat message saying he cared about her, calling her his star TA with a heart emoji, mentioning that she loved the beach with a bikini emoji, saying she can owe him one with a winking face emoji, and inviting her to dinner on April 1, 2025
- Liking and commenting on Chloe's Instagram post from April 11, 2025
- Hugging Chloe in his office on April 25, 2025
- Giving Chloe a journal, saying, "A parting gift to remember me by while you are in Florida this summer," and giving Chloe a photo that included his dog and a note on April 25, 2025

However, the Panel finds insufficient evidence to determine that it is more likely than not that the following conduct by Dr. Graham was unwelcome as to Chloe:

- Inviting Chloe to get coffee in a text message exchange on February 24, 2025

### Title IX Impact Analysis: Severe, Pervasive, and Objectively Offensive

Having determined what conduct found to have occurred was on the basis of sex and unwelcome, the Panel next considers whether a reasonable person would determine the conduct to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

The Panel finds that Dr. Graham's conduct was both pervasive and objectively offensive. As to the pervasive requirement, the Panel concludes that it is more likely than not that Dr. Graham's unwelcome conduct on the basis of sex meets this second element. As noted above, Chloe gave an account of several different instances of Dr. Graham's conduct that contributed to her hostile environment. The various forms of conduct over the course of several months speak to the pervasive nature of the behavior.

As to the objectively offensive element, the Panel concludes that it is more likely than not that Dr. Graham's unwelcome conduct on the basis of sex was objectively offensive. As noted, Chloe gave an account of certain conduct being offensive or inappropriate. This account was also supported by Marcy's account that described the same conduct as offensive or inappropriate. The Panel finds that a reasonable person would consider Dr. Graham's conduct to be offensive conduct for a professor to engage in with a teaching assistant.

Nonetheless, the Panel finds insufficient evidence that it is more likely than not that Dr. Graham's unwelcome conduct on the basis of sex was severe. Many forms of conduct in which Dr. Graham engaged were more subtle rather than overt. Dr. Graham did not make any explicitly sexual statements or propositions. Rather, he engaged in sexual or sex-based conduct through several subtle comments and actions over the course of several months. In reaching this conclusion, the Panel considered the increased power differential present as a result of Dr. Graham's position, but considering the nature of Dr. Graham's conduct and the lack of any explicitly sexual comments or propositions, the Panel finds that a reasonable person would not consider Dr. Graham's conduct to be severe.

Therefore, because the Panel finds insufficient evidence that Dr. Graham's unwelcome conduct on the basis of sex was severe, the Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham's unwelcome conduct on the basis of sex was so severe, pervasive, *and* objectively offensive that it effectively denied Chloe equal access to the University's education program or activity. As such, Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham engaged in Title IX Hostile Environment Harassment.

### Non-Title IX Impact Analysis: Severe or Pervasive

Having found insufficient evidence to determine that it is more likely than not that the Title IX Hostile Environment Harassment impact standard was met, the Panel considers whether the Non-Title IX Sexual Harassment impact standard is met. Under the Policy, the Panel considers whether a reasonable person would determine the conduct to be so severe or pervasive that it substantially and unreasonably interferes with an individual's employment or education, or creates an intimidating, hostile, or offensive employment or educational environment.

As described above, the Panel finds insufficient evidence to determine that it is more likely than not that Dr. Graham's unwelcome conduct on the basis of sex was severe but sufficient evidence to determine that it is more likely than not that Dr. Graham's unwelcome conduct on the basis of sex was pervasive. Furthermore, the Panel finds that the conduct substantially and unreasonably interfered with Chloe's employment or education and created an intimidating, hostile, or offensive employment or educational environment. Not only did Chloe express discomfort with Dr. Graham's conduct, but she also gave an account of how the conduct impacted her education-related decisions. Chloe stated that she declined to go with Dr. Graham to the out-of-town conference because she did not want to sit in a car with him for two hours there and back. Additionally, Chloe stated that as a result of Dr. Graham's conduct, she sought out a teaching assistant position with another professor for the following school year. Finally, Chloe stated that as she thought about returning to the University in the fall and having to see Dr. Graham and potentially interact with him, she "was just so uncomfortable and anxious." In reaching this finding, the Panel considered that Chloe continued to carry out her teaching assistant role through the end of the spring semester. However, Chloe's account makes clear that she felt like she could not just stop working with Dr. Graham and that she was hoping to receive a reference letter and assistance in getting an internship. Furthermore, an individual need not be completely excluded from their employment or from an education program or activity to find a substantial and unreasonable interference with their employment or education or an intimidating, hostile, or offensive employment or educational environment. Therefore, the Panel finds sufficient evidence to determine that it is more likely than not that a reasonable person would determine Dr. Graham's unwelcome conduct on the basis of sex to be so severe or pervasive that it substantially and unreasonably interfered with Chloe's employment or education, or created an intimidating, hostile, or offensive employment or educational environment. As such, the Panel finds sufficient evidence to determine that it is more likely than not that Dr. Graham engaged in Non-Title IX Hostile Environment Harassment under the Policy.